THE LAW

RELATING TO

FRIENDLY SOCIETIES,

AND

INDUSTRIAL AND PROVIDENT SOCIETIES,

WITH THE ACTS, OBSERVATIONS THEREON, FORMS OF RULES, &c.,
AND THE LEADING CASES AT LENGTH,

AND

A COPIOUS INDEX.

BY W. TIDD PRATT, ESQ.,
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

Seventh Edition.

LONDON:
SHAW AND SONS, FETTER LANE,
PRINTERS AND PUBLISHERS OF THE BOOKS AND FORMS FOR SAVINGS BANKS,
FRIENDLY SOCIETIES, GOVERNMENT ANNUITY SOCIETIES, &c., &c.

1867.

LIST OF

FRIENDLY SOCIETIES'

BOOKS AND FORMS,

PUBLISHED BY

SHAW AND SONS, FETTER LANE,

LONDON.

THE LAW RELATING TO FRIENDLY SOCIETIES, by W. TIDD PRATT, Esq. Barrister-at-Law. Seventh Edition. 5s.

Account Books, &c. for Friendly Societies.

By MR. H. TOMPKINS, Associate of Actuaries.

No.		s.	d.
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Friendly Societies' Books and Forms.

Settled by R. C. NORMAN, Esq., and Examined by G. DAVIES, Esq. F.R.S.

No.		£	s.	d.
1	Register Book of Members	0	11	0
2	Premium Journal	0	14	0
3	Allowance Book	0	10	0
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5	Cash Book	0	7	0
6	Treasurer's Ledger	0	8	0
7	Annual Account Book	0	8	0
8	Members' Ledger	0	15	0
8a	Minute Book	0	15	0
9	Tables for the Certificate of the Actuary.			
	Friendly Society Rules: Estimates for the Printing of any Quantity forwarded on application to the Publishers.			
10	Proposal from a person to become a Member per 100	0	4	0
11	Declaration of Enrolments, in Books per 250	0	6	6
12	Demand for full pay per 100	0	1	6
13	Demand for half pay ,,	0	1	6
14	Notice from the Party of his being able to resume his Labour ,,	0	1	6
15	Certifi[illegible] ,,	0	16	0
16	Lists [illegible]ers ,,	0	3	6
17	Memb[illegible] per doz.	0	2	0
18	Bills [illegible] arising from becoming Mem[illegible] per 1000	0	15	0

			£	s.	d.
19	Assurer's Certificate of Health	per 100	0	2	0
20	Medical Certificate of Health	per 250	0	5	6
21	Instructions to Medical Men	per 100	0	6	0
22	Collector's Receipt	„	0	5	0
23	Policy of Assurance	per doz.	0	6	0
24	Health Certificate for the Benefit Branch	per 100	0	1	6
25	Agreement on entering the Society	„	0	4	0
26	Agreement on entering the Medical Branch	„	0	3	0
27	Nomination of a Relation of the Benefit Branch to the Weekly Pension after a Member's Death	per 100	0	2	0
28	Sick Letter	„	0	5	0
29	Demand for Sick Allowance (*Benefit Branch*)	„	0	4	0
30	Agreement on entering the Benefit Branch	„	0	5	6
31	Deposit Books, pasted Covers, ruled sufficient to hold the entries of 8 years	per 250	2	10	0
32	Surgeon's Certificate for higher premium	„	0	5	6
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34	Trustees' Order to pay money into the National Debt Office	„	0	4	0
35	Secretary, application to Clergyman for Certificate of Baptism	„	0	4	0
36	Member's Cards of Deposits	„	0	10	0
37	Receipt Books for One Year's Subscription		0	2	0
38	Register Book of Sickness and Mortality, bound in rough calf, and lettered on the side		0	15	0
39	Friendly Society Bonds	each	0	0	4
40	Quinquennial Returns of the names of the Members and of the Sickness and Mortality experienced in the Society for that period:—				
	For a Two Sheet Return, sufficient for 90 Names		0	0	7
	„ Six ditto, ditto 330 „		0	1	7
	And for every extra sheet, or 60 Names beyond 330, and under One Quire, an additional		0	0	3
	One Quire		0	3	0
	Per Ream (20 Quires)		2	0	0
41	Declaration of a Friendly Society on investing money in a Savings Bank, in books	each	0	9	6
42	Members' Book of Payments	„	0	0	6
43	Manager's Check Book		0	2	0
44	Weekly Contribution Book		0	7	0
45	Sick Pay Book		0	7	0
46	Form of the Order of the Trustees to make Payments into Bank of England	per quire	0	4	0
47	Ditto, ditto, under 10 Geo. 4, c. 56	„	0	4	0
	NORMAN'S System of Accounts for Benefit [illegible]		0	1	0

No. 50. Appointment of Trustees, 1*d. each.*

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[*Continued at end of Work*

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1867.

LONDON : SHAW AND SONS, PRINTERS, FETTER LANE.

TO

THE RIGHT HONOURABLE

T. H. S. SOTHERON ESTCOURT,

THE FOLLOWING PAGES

ARE

(WITH HIS PERMISSION)

RESPECTFULLY DEDICATED

BY

THE AUTHOR.

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MENTIONED IN NOTES.

TABLE OF CASES

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OBSERVATIONS

ON THE FRIENDLY SOCIETIES ACTS.

THE Acts regulating Friendly Societies are the 18 & 19 Vict. c. 63, the 21 & 22 Vict. c. 101, the 23 & 24 Vict. c. 58, and the 29 Vict. c. 34, and the following are the objects for which a Friendly Society may be established:

1. For insuring a sum of money not exceeding £200, to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the wife of a member, and also of a sum for the funeral expenses of a child of a member, not exceeding the sum of £6 for a child under five years of age, nor the sum of £10 for a child between the ages of five and ten.
2. For the relief or maintenance of the members, their husbands, wives, children, brothers, or sisters, nephews or nieces, in old age, sickness, or widowhood, or the endowment of the members or nominees of members at any age, but no annuity to exceed £30 a year, and no endowment to exceed £200.

3. For any purpose which shall be authorized by one of Her Majesty's Principal Secretaries of State, or in Scotland, by the Lord-Advocate, as a purpose to which the powers and facilities of the Act ought to be extended, (the purposes already authorized are mentioned in the note to section 9 of the Act.)
4. For the assurance to any amount against the loss by death of neat cattle, sheep, lambs, swine, and horses from disease or otherwise (*a*). 29 Vict. c. 34.

Any provident, benevolent, or charitable institution or society formed for the purpose of relieving the physical wants and necessities of persons in poor circumstances, or for improving the dwellings of the labouring classes, or for granting pensions, or for providing habitations for the members or other persons elected by them, may, by transmitting their rules to the Registrar, and obtaining his certificate as to their not being repugnant to law, become entitled to the benefit of so much of the Acts as relates to the appointment of and the vesting of the property of the society in trustees, their suing and being sued and their liability, the giving of security by the treasurer and the rendering of accounts by him, the settlement of disputes, purchasing of buildings for the purposes of

(*a*) Contributions for this kind of assurance are recoverable as a debt in the County Court, sect. 2.

the society, and the punishment of fraud, in the same manner as if it were a society established under these Acts.

Societies also whose rules are not certified may, by depositing them with the Registrar, obtain the benefit of such of the provisions of these Acts as relate to the settlement of disputes, and the punishment in a summary way of fraud or imposition upon the funds or property of the society.

Any society may be dissolved with the consent of *five-sixths in value of the votes* of the members, including honorary members, and of all those receiving any relief or annuity, unless the claims of such persons are duly satisfied, or adequate provision made for the purpose. The agreement for the dissolution must either set forth the intended division or appropriation of the funds, or refer such matter to the Registrar, and where the society is in an insolvent state, the Registrar may, upon the application of not less than *five-eighths of the whole of the members*, dissolve the same, if he shall upon investigation so think fit, and may direct how the funds and property of the society are to be divided. The agreement for the dissolution, when duly signed and sent to the Registrar, accompanied by a declaration of the provisions of the Act having been complied with, and also the award of the Registrar, is binding and effectual on all persons, unless proceedings are taken by any member to set aside the dissolution within three

months from the date of the Gazette in which the advertisement of the dissolution is inserted.

A society may transfer its engagement to any other society, upon such terms as the trustees and committee of management, or a majority of the members of each society, shall agree upon, and may change its name with the consent of the Registrar.

Buildings for the purpose of holding the meetings of the society may be purchased, built, or taken upon lease, and also adapted and furnished; land, not exceeding one acre, may also be taken for the purpose of erecting such a building, and such premises may be mortgaged, sold, exchanged, or let. Any building purchased or appropriated for the above purpose, belonging to any society established under any former Act, is to be considered as if required under these Acts. The money required for such purposes, and also for the expenses of management, is to be raised as directed by the rules.

Trustees of the society are to be appointed from time to time, and a copy of the resolution of every such appointment, signed by the trustee and the secretary of the society, is to be sent to the Registrar, and by him deposited with the rules of the society. All the real and personal property of the society is declared by the Act to be vested in the trustees, and all actions on behalf of the society are to be brought by them in their own names. Actions against the society may be brought either against

the trustees or the secretary. The trustees are only responsible for monies actually received by them on account of the society.

The treasurer, and also every other officer required by the rules to give security, must do so by bond with one surety before taking upon himself the execution of his office. Proceedings may be taken upon the bond for the balance appearing due from him upon his last account before the County Court, or any Superior Court, with liberty, however, for him to set off any sums paid by him for the society since such last account.

In case of the death or bankruptcy, of any officer of the society, or in the event of any execution against his property, &c., the society is entitled to receive payment in priority to all other creditors, of all monies in his hands belonging to the society by virtue of his office; and every person having in his possession any property of the society, and fraudulently withholding the same, is punishable in a summary way.

The rules of the society must make provision for certain matters, and in order to obtain the Registrar's certificate, two copies, signed by three members and the secretary, must be sent to him; and where the society purposes to grant any certain annuity or superannuation, the Tables must be certified by the Actuary of the National Debt Office, or by an Actuary of five years standing to some Life Assurance Company. The same process must be gone through on every alteration of the

rules, and the circulation, &c., of any copy of false rules or alterations is made punishable as a misdemeanor.

Whenever on the death of a member a sum not exceeding £50 becomes payable, the same may, without taking out letters of administration, be paid to the person mentioned in the rules, or nominated by the member by any writing deposited with the secretary, or in default of there being any such person, then to the person appearing to the trustees to be entitled under the Statute of Distributions. The Stamp Acts, also, do not, in certain cases, apply to Friendly Societies.

The Acts make the investment of the funds of the society upon certain therein-mentioned securities compulsory, and expressly prohibit the funds being laid out in the purchase of houses or lands (except for holding the meetings of the society), or shares in any company, or upon personal security, other than that of any member to a certain amount; but the committee of management may subscribe to any hospital, infirmary, charitable or provident institution, if any member, or his wife, child, or nominee, is eligible to receive the benefits thereof.

In case of a trustee being removed from his office, or becoming bankrupt, insolvent, or lunatic, or it not being known whether he is living or dead, the Registrar has power to direct the stocks, annuities, or funds of the society standing in his

name, solely or jointly with the other trustees, to be transferred into the names of the newly-appointed trustees; and all applications for the removal of trustees, or for any other relief, order, or direction, as well as for enforcing the decision of arbitrators, and determining disputes if no arbitrators have been appointed, or an award made within a limited time, are to be made to the County Court, which over all such matters is to have the powers and authorities of the Court of Chancery, and no appeal is allowed from its decision.

Disputes are to be decided in the manner pointed out by the rules, and may, if thought fit, be referred by the rules to justices, and the decision come to is, in all cases, declared to be final and binding on all persons interested.

Although a member may, unless the rules of his society provide to the contrary, belong to any number of societies, he cannot receive in the aggregate, in respect of an assurance, more than £200, or an annuity of £30 per annum from such societies collectively, and must, before receiving any such benefit, make a declaration to the effect that the total value of any benefit accruing to him does not exceed the limited amount.

Once in every year, before the first day of June, there must be sent to the Registrar a general statement of the funds and effects of the society for the past year, or a copy of the last annual report; and also once in every five years, within three months from the month of

December, a return of the rate of sickness and mortality experienced within the preceding five years, in a form to be prepared by the Registrar.

By the 17 & 18 Vict. c. 105, the 22 & 23 Vict. c. 40, and the 23 Vict. c. 13, no man by reason of enrolment or service in the militia, naval coast volunteers, naval reserve volunteer force, yeomanry, or volunteers, will lose or forfeit any interest in his society, notwithstanding any rule of such society to the contrary; but a militiaman may be required to pay an extra contribution during the time he shall be serving out of the United Kingdom, or his claim on the society may be suspended, if the rules shall have contained any clause against the enrolment or service of any member in the militia.

If by the rules a medical man is to be appointed, he must by sect. 36 of 21 & 22 Vict. c. 90, be duly registered under that Act.

Friendly Societies not assuring more than £200, or a greater annuity than £30 per annum to any one person are exempt from payment of the tax in respect of their stocks, dividends, and interest chargeable under schedule (C.) of the Act, and also of their interest and other profits and gains chargeable under schedule (D.); and when the property is invested in the public securities in the Bank of England, the exemption must be claimed and proved by a trustee, or the treasurer, or any member, before the Commissioners for special purposes. (5 & 6 Vict. c. 35, s. 88,) and

Members of Friendly Societies may, for the purposes of the Income Tax Acts, deduct the annual premium payable for a life assurance or deferred annuity, if the premiums are made for three months at least.

Friendly Societies are within the provisions of the Joint Stock Companies Winding-up Acts. (*In re The National, Industrial, and Provident Society*, 9 Weekly Rep. 774; 30 L. J. (Ch.) 940). *Alfreton District Friendly Society*, 18 Weekly Rep. 301, and having any endowment, will come under the provisions of the Charitable Trusts Act, 1853, the 62nd section of that Act exempting only such Societies as are wholly maintained by voluntary contributions.

LINCOLN'S INN,
March, 1867.

AN ACT

TO CONSOLIDATE AND AMEND THE LAW RELATING TO FRIENDLY SOCIETIES.

[23*rd July*, 1855.]

WHEREAS it would conduce to the improvement of the law relating to Friendly Societies if the several statutes relating thereto were consolidated, and certain additions and alterations were made therein: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same:

Acts inserted in first schedule repealed.

I. There shall be hereby repealed the several Acts or parts of Acts set forth in the first schedule hereto, save and except as to any offences committed, or penalties or liabilities incurred, or bond or security given, or proceedings taken, under the same, before the commencement of this Act.

Societies under former Acts to continue.

II. Provided nevertheless, that, notwithstanding the repeal of the said several statutes, every Friendly Society now subsisting, which heretofore had been formed and established under the said Acts or any of them, shall still be deemed to be and shall continue to be a subsisting society, as fully as if this Act had not been made, unless and until such society shall be dissolved, or united with some other society as hereinafter mentioned (*a*).

Their rules to continue in force, and enrolments to be sent to Registrar.

III. Provided also, that the rules of every such subsisting society hitherto formed and established, which have been hitherto confirmed, registered, or certified under the said Acts or any of them, shall be deemed valid and in force until the same shall be altered or rescinded as hereinafter mentioned; and all transcripts of any of such rules which are now filed with the rolls of the sessions of the peace of any county, riding or division, city or borough, liberty or place, shall be taken off the file, and shall be transmitted, on or before the first day of November, one thousand eight hundred and fifty-five, to the Registrar under this Act, to be by him kept in such manner as shall be directed from time to time

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(*a*) A Friendly Society, enrolled in 1832, shortly afterwards framed new rules, which were never enrolled or certified, and it was held that the society was a subsisting society under the original rules by virtue of this section. *Meredith* v. *Whittingham*, 1 C. B. Rep. N. S. 216. See also *Sinden* v. *Bankes*, 30 Law J. (Q. B.) 112; 9 Weekly Rep. 415. A society established under any of these Acts may, by virtue of this section, grant assurances above £200. *Clayton* v. *Owen*, 10 Weekly Rep. 770; but then, under sec. 5, they will be deprived of the benefits of this Act.

by one of Her Majesty's Secretaries of State in that behalf.

All their contracts, and all bonds, &c., to them, to continue in force.

IV. Provided also, that all contracts and engagements by or with any of the said societies now valid and in force, and all bonds and securities heretofore given by any trustee, treasurer, or other officer of any such society shall continue and be valid and in force notwithstanding the repeal of the said Acts.

Their exemptions, powers, and privileges under this Act.

V. All such subsisting societies, whose rules have heretofore been confirmed, registered, or certified under the said Acts or any of them, shall, so long as they shall not hereafter effect an assurance to any member thereof, or other person, of any sum exceeding two hundred pounds, or of any annuity exceeding thirty pounds per annum, enjoy all the exemptions and privileges by this Act conferred on societies to be established under the provisions of this Act, as fully as if they had been registered and certified under this Act as hereinafter mentioned (*b*).

Registrars.

Registrars, how and by whom appointed.

VI. For the purposes of this Act, there shall be three Registrars of Friendly Societies, one for England, one for Scotland, and one for Ireland, who shall hold their respective offices during the pleasure of the Commissioners for the Reduction of the National Debt; and upon the death, resignation, or removal of any one of them, the said Commissioners shall appoint another, being a barrister in England

(*b*) See note to sec. 2, *supra*.

or Ireland, and in Scotland an advocate, of not less than seven years standing, to the said office.

Their salaries.

VII. It shall be lawful for the Commissioners of Her Majesty's Treasury to pay to the present Registrar for England a salary equal to that which has been paid to him yearly in each of the three last years, not exceeding one thousand pounds per annum, and to pay to any Registrar hereafter to be appointed for England a salary not exceeding eight hundred pounds a year, and to pay to the Registrars for Scotland and Ireland respectively a salary such as the said Commissioners shall direct not exceeding one hundred and fifty pounds a year, every such salary to be paid by four equal quarterly payments; and any of the said Registrars who shall be appointed, or who shall die, resign, or be removed from his office, in the interval between two quarterly days of payment, shall be entitled to a proportionate part of his salary, and such salaries and proportionate parts of salaries shall be paid out of such monies as shall be provided by parliament for that purpose.

Their expenses of office, &c.

VIII. The said Commissioners of Her Majesty's Treasury shall, out of such monies as may be provided by parliament for the purpose, pay to the said Registrars respectively such sum as will defray the expenses allowed by the said Commissioners from time to time for office rent, salaries of clerks, stationery, computation of tables, and for such other expenses as may be incurred by them respectively.

IX. It shall be lawful for any number of persons to form and establish a Friendly Society, under the provisions of this Act, for the purpose of raising by voluntary subscriptions of the members thereof, with or without the aid of donations, a fund for any of the following objects; (that is to say,)

Societies, how and for what purpose formed.

1. For insuring a sum of money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the wife, or child of a member.

For payments on death.

2. For the relief or maintenance of the members, their husbands, wives, children, brothers or sisters, nephews or nieces, in old age, sickness (*a*) or widowhood, or the endowment of members or nominees of members at any age.

For relief in sickness, &c,

3. For any purpose which shall be authorized by one of Her Majesty's Principal Secretaries of State, or in Scotland by the Lord Advocate, as a purpose to which the powers and facilities of this Act ought to be extended (*b*).

For other purpose authorized by the Secretary of State, &c.

(*a*) Upon the construction of this word in the 9 & 10 Vict. c. 66, s. 4, it was held that lunacy was not in any case to be regarded as sickness, *R.* v. *Manchester*, 5 Weekly Rep. 20, 6 E. & B. 919, and that pregnancy also was not sickness; and that by sickness is meant a state of bodily disease, being a derangement of the functions of the body, *R.* v. *Huddersfield*, 5 Weekly Rep. 629; 21 Jur. 718.

(*b*) Under this section the following purposes have been authorized by the Secretary of State, namely—For assisting members when they are compelled to travel in search of employment; for granting temporary relief to members in distressed circumstances; for the relief and maintenance of the members in case of lameness, blindness, or bodily hurt through accident; for the purchase of coals and other necessaries to be supplied to the members; for assuring the mem-

Provided that no member shall subscribe or contract for an annuity exceeding thirty pounds per annum, or a sum payable on death, or on any other contingency, exceeding two hundred pounds.

And if such persons so intending to form and establish such society, shall transmit rules for the government, guidance, and regulation of the same to the Registrar aforesaid, and shall obtain his certificate that the same are in conformity with law as hereinafter mentioned, then the said society shall be deemed to be fully formed and established from the date of the said certificate (*c*).

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bers against loss by disease or death of cattle employed in trade or agriculture; for accumulating at interest, for the use of the member, the surplus fund remaining, after providing for his assurance; for relief in case of shipwreck, or loss, or damage to boats or nets; and for the establishment of Working Men's Clubs. See report of the Registrar of Friendly Societies, July, 1866.

(*c*) Notwithstanding this section, any bond or security given to the treasurer before obtaining the certificate will be valid, and may be sued upon at law. This point arose in the case of *Jones* v. *Woollam*, 5 Barn. & Ald. 769, (see Appendix) where it was held that a bond given to the treasurer of a benefit society for the use of the society, was an available security at common law, although the rules of the society had not been confirmed pursuant to the statute then in force relating to Friendly Societies. In *Margett* v. *Parkes*, 1 Dowl. & L. 582, which was an action of assumpsit by the treasurer of a Friendly Society on a note, it was held that an averment that the rules were filed under 10 Geo. 4, c. 56, before the making of the promise, was not material, and an objection that they were not filed until after the making of the note, but before it came due, was invalid.

A society is formed when persons meet to make contributions subject to certain rules. The formation of the society dates from that period, if the rules are afterwards certified. See *Williams* v. *Hayward*, 2 Jurist, N. S. 1128; 19 Justice of the Peace, p. 788, where it was held that where a mortgage was made to the society prior to the date of the certifi-

X. [*Repealed by* 21 *&* 22 *Vict. c.* 101, *s.* 2, *infra*, p. 64.]

XI. And whereas many provident, benevolent, and charitable institutions and societies are formed and may be formed for the purpose of relieving the physical wants and necessities of persons in poor circumstances, or for improving the dwellings of the labouring classes, or for granting pensions, or for providing habitations for the members or other persons elected by them, and it is expedient to afford protection to the funds thereof: Be it enacted, that if two copies of the rules of any such institution or society, and from time to time the like copies of any alterations or amendments made in the same, signed by three members and the secretary thereof, shall be transmitted to the Registrar aforesaid, such Registrar shall, if he shall find that the same are not repugnant to law, give a certificate to that effect; and thereupon the following sections of this Act, that is to say, the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, and twenty-second, fortieth, forty-first, forty-second, and forty-third, shall extend and be applicable to the

Benevolent societies, in what case entitled to the benefits of this Act.

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cate, the certificate had reference back to the formation of the society, so as to exempt the mortgage from stamp duty; and, as in *Bradburne* v. *Whitbread*, 6 Sc. N. P. 284, which was the case of an unstamped promissory note given to the trustees of a loan society established under the Friendly Loan Act, it was contended that the trustees could not sue on the note, it having been made before the rules were enrolled, though after they had been certified; but the court held that the enrolment of the rules before the commencement of the action was sufficient to enable the trustees to recover.

said institution and society, as fully as if the same were a society established under this Act (*a*).

Statutes as to unlawful oaths not to extend to societies under this Act or any repealed Acts.

XII. The Act of the thirty-ninth of *George* the Third, chapter seventy-nine, and the Act of the fifty-seventh of *George* the Third, chapter nineteen, and also the Act of the fourteenth and fifteenth of Her present Majesty, chapter forty-eight, relating to unlawful oaths in Ireland, shall not extend to any society established under this Act or any of the Acts hereby repealed, or to any meeting of the members or officers thereof, in which society or at which meeting no business whatever is transacted other than that which directly and immediately relates to the objects of the society as declared in the rules thereof, and set forth in the certified copy thereof: Provided that the trustees or other officers of the society, when required under the hands of two of Her Majesty's justices of the peace, shall give full information to such justices of the nature, objects, proceedings, and practices of such society, and in default thereof the provisions of the Acts herein recited shall be in force in respect of such society (*b*).

(*a*) By sect. 3 of 21 & 22 Vict. c. 101, sections 16 and 24 are also made applicable to these societies.

(*b*) In the case of *Hodges* v. *Wale*, 2 Weekly Rep. 65, (see Appendix,) V. C. *Wood* held that the registrar's certificate was conclusive as to a society being in conformity with law, and therefore entitled to the benefit of this section; but in the *R.* v. *Davis*, 1 Weekly Notes, p. 25, it was held that evidence might be admitted to show that the society had changed its character, and so was not entitled to the benefit of the Act.

XIII. It shall be lawful for the members of any society heretofore formed and established, or hereafter to be formed and established, at some meeting thereof to be specially called in that behalf, to dissolve or determine the same by consent: Provided that no society established under this or any Act relating to Friendly Societies shall be dissolved or determined without obtaining the votes of consent of five-sixths in value of the then existing members thereof, including the honorary members, if any, to be ascertained in manner hereinafter mentioned, nor without the consent of all persons, if any, then receiving or then entitled to receive any relief, annuity, or other benefit from the funds thereof, to be testified under their hands individually and respectively, unless the claim of every such person be first duly satisfied, or adequate provision made for satisfying such claim (*c*); and for the pur- Societies how dissolved.

(*c*) The rules may require other assents to a dissolution than those mentioned in this section. By the rules of a society a dissolution was not to take place without the consent of nine-tenths of the members. More than that number agreed to dissolve the society, and divide the funds equally; and it was held that the resolution having been passed by the majority required by the rule, and by the five-sixths in value pursuant to the Act, was binding upon all the members, *Poore* v. *Dennett*, 18 Justice of the Peace, 215, (see Appendix). In a late case before the Vice-Chancellor *Wood*, *In re The Eclipse Mutual Benefit Society*, M. S., the society agreed to dissolve, but the necessary consent to the dissolution was not obtained, and the non-consenting members, some six or seven persons, continued paying their subscriptions, but the other members ceased to do so. The Vice-Chancellor would not direct the funds to be paid over to such continuing members, but said that the society had ceased to exist by the nonpayment of the members, and he made no order. In *Spiller* v. *Maude*, 13 Weekly Rep. 70, it was held that a sole surviving member was not entitled as such to the funds of the society, where

pose of ascertaining the votes of such five-sixths in value of the numbers* as aforesaid, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member, but no one member shall have more than five votes in the whole; and the intended appropriation or division of the funds or other property shall be fairly and distinctly stated in the agreement for dissolution prior to such consent being given (*b*); and the agreement for such dissolution duly signed as aforesaid, accompanied with a statutory declaration by one of the trustees, or by three members and the secretary, taken before a justice of the peace, that the provisions of this Act have been complied with, shall be forthwith transmitted to the Registrar, to be by him deposited with the rules of the society, and such agreement shall thereupon be an effectual discharge at law and in equity to the trustees, treasurers, and other officers of such society, and shall operate as a release from all the members of the society to such trustees, treasurers, and other officers; and it shall not be lawful in any society to direct a division or appropriation of any part of the stock thereof, except for the purpose of carying into effect the general interests and objects declared in the rules as originally certified, unless the claim of every member is first duly satisfied, or adequate provision

* *Sic.*

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part had arisen from donations, but the fund was ordered to be paid into court, and the dividends to be paid to the member during his life, with liberty to apply at his death.

(*b*) By sect. 1 of 23 & 24 Vict. c. 58, this appropriation or division need not be stated, but the sum may be referred to the award of the Registrar.

be made for satisfying such claims; and in case any member of such society shall be dissatisfied with such provision, it shall be lawful for him or her to apply to the judge of the county court of the district within which the usual place of business of the society is situated (*a*) for relief or other order (*b*); and the said judge shall have the same powers to entertain such application, and to make such order or direction in relation thereto, as he may think the justice of the case may require, as hereinafter is enacted in regard to the settlement of disputes; and in the event of the dissolution or determination of any society, or the division or appropriation of the funds thereof, except in the way hereinbefore provided, any trustee or other officer or person aiding or abetting therein shall, on conviction thereof by two justices (*c*), be committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding three calendar months, as to such justices shall seem meet (*d*).

(*a*) By sect. 1 of 21 & 22 Vict. c. 101, the judge of the sheriff's court, in London, and in Ireland the assistant barrister within his district, and the recorder in Dublin and Cork, have respectively the same jurisdiction as by this section is given to the judge of a county court.

(*b*) See note to sect. 24, *infra*, as to the time within which the complaint is to be made.

(*c*) See note to sect. 24 as to the jurisdiction of the lord mayor, &c.

(*d*) By sect. 1 of 23 & 24 Vict. c. 58, instead of its being necessary to set out in the agreement for dissolution the intended appropriation or division of the funds, the same may by such agreement be referred to the Registrar. And by the same section provision is made for dissolving the society in case of its being in an insolvent state.

Societies may unite with others, or one society may transfer its engagements to another.

XIV. It shall be lawful for any two or more societies established under this or any of the Acts hereby repealed to unite and become incorporated in one society, with or without any dissolution or division of the funds of such societies or either of them; or a society formed and established under this Act or any of the said repealed Acts may be allowed to transfer its engagements to any other Friendly Society, if any other such society shall undertake to fulfil the engagements of such society, upon such terms as shall be agreed upon by the major part of the trustees, and also of the committee of management of both societies, or the majority of the members of each of such societies at a general meeting convened for the purpose.

Minors may be elected as members.

XV. A person under the age of twenty-one may be elected or admitted as a member of any society established under this Act or any of the Acts hereby repealed, the rules of which do not prohibit such election, and may and he is hereby empowered to execute all necessary instruments and to give all necessary acquittances. Provided always, that during his nonage he shall not be competent to hold any office of director, trustee, treasurer, or manager of such society.

Buildings for the purpose may be purchased or leased.

XVI. It shall be lawful for the trustee or trustees for the time being of any Friendly Society formed and established under this Act or under any of the Acts hereby repealed, with the consent of a majority of the members thereof present at a special or general meeting of the society, to purchase, build, hire, or take upon lease any building for the

purpose of holding such meetings, and to adapt and furnish the same, and to purchase or hold upon lease any land not exceeding one acre for the said purpose of erecting thereon a building for holding the meetings of the society, and such trustee or trustees, shall thereupon hold the same in trust for the use of such society; and, with the like consent as aforesaid, such trustee or trustees may mortgage, sell, exchange, or let such building or any part thereof; and the receipt in writing of such trustee, or one of such trustees for the time being, shall be a legal discharge for the money arising from such mortgage, sale, exchange, or letting; and no mortgagee, purchaser, tenant, or assignee shall be bound to inquire into or ascertain or prove the consent aforesaid, to verify his title: Provided always, that any building purchased or appropriated for the purpose aforesaid already belonging to or in the possession of any Friendly Society heretofore formed and established under the said repealed Acts or any of them may be holden and dealt with as if it had been acquired under this Act; and the land or buildings which may be vested in the treasurer, trustee, or other officer thereof for the time being shall thereupon vest in the trustee or trustees, for the time being of such society, for the same estate and interest as the said treasurer, trustee, or other officer may have therein, without any conveyance or assignment whatever: Provided, nevertheless, that all money spent in purchasing, building, hiring, or taking upon lease any building for the purpose of holding such meetings, and in adapting and furnishing the same, be raised according to the rules of the society on such behalf

inserted; and this section shall apply to any society registered under the Industrial and Provident Societies Act, 1852, and to any building or land to be purchased, built, hired, or taken on lease for the purposes of the labour, trade, or handicraft of such society in all respects as hereby enacted with regard to any building or land for the holding the meetings of any Friendly Society (*a*).

Trustees how appointed.

XVII. Every Friendly Society established under this Act shall, at some meeting of its members, and by a resolution of a majority of the members then present, nominate and appoint one or more person or persons to be trustee or trustees for the said society, and the like in the case of any vacancy in the said office; and a copy of the resolution so appointing such person or persons to the office of trustee, and signed by such trustee or trustees and by the secretary of the said society, shall be sent to the Registrar, to be by him deposited with the rules of the said society in his custody: Provided always that where no trustee shall have been appointed in any society established under any one of the Acts hereby repealed, the treasurer thereof, or other person who has custody of monies of such society, shall be taken to be a trustee, within the meaning of this Act (*b*).

(*a*) By sect. 3 of 21 & 22 Vict. c. 101, the provisions of this section are extended to societies entitled to the benefit of sect. 11.

(*b*) The trustees may sue and be sued before the resolution has been sent to the Registrar; *Beckett* v. *Willets*, 5 Weekly Rep. 622. (See Appendix.)

See Appendix for form of appointment of trustees.

XVIII. All real and personal estate whatsoever belonging to any such society established under this Act or any of the Acts hereby repealed shall be vested in such trustee or trustees for the time being, for the use and benefit of such society and the members thereof, and the real or personal estate of any branch of a society shall be vested in the trustees of such branch, and be under the control of such trustee or trustees, their respective executors or administrators, according to their respective claims and interest, and upon the death or removal of any such trustee or trustees the same shall vest in the succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the name or names of such new trustee or trustees; and in all actions or suits or indictments, or summary proceedings before magistrates, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in his or their proper name or names as trustees of such society, without any further description (*c*). Property of the society vested in them.

(*c*) This section empowers the trustees of a society to call for a transfer of funds belonging to the society previously to its legal establishment, if a majority of the members agree to the society being brought under the Act, or the rules provide that the officers may at any time have the rules certified, as will be seen by the cases of *Yeates* v. *Roberts*, 3 Drewry, 171, affirmed S. C. 7 De Gex, M. & G. 227, (see Appendix.)

Actions, &c., by or against them.

XIX. The trustee or trustees of any such society are hereby authorized to bring or defend, or cause to be brought or defended, any action, suit or prosecution in any court of law or equity, touching or concerning the property, right, or claim to property of the society, for which he or they are such trustee or trustees as aforesaid; and such trustee or trustees shall and may, in all cases concerning the real or personal property of such society, sue and be sued, plead and be impleaded, in any court of law or equity, in his or their proper name or names, as

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Hodges v. *Wale*, 2 Weekly Rep. 65. The property, however, of the society in the hands of other persons does not vest in the trustees by their mere appointment. In the case of *Dewhurst* v. *Clarkson*, 3 E. & B, 194, (see Appendix,) it appeared that by the amended rules of the society, three trustees were to be appointed, of whom one was to be treasurer. At a special meeting three trustees were elected, but another person not being a trustee was appointed treasurer, and in an action against a former treasurer for the balance in his hands, it was held that the trustees could not maintain the action, as the money of the society does not, before it is invested, vest in the trustees. By one of the rules the treasurer was to invest in the names of the trustees, the unappropriated stock exceeding £50; and in the same case it was held that as the new treasurer had been appointed contrary to the rules, there was nothing to show that the former treasurer had ever been in fact removed from his office. Upon the construction of a similar clause to this in the 10 Geo. 4, c. 56, in *Walker* v. *Giles*, 6 Q. Bench Rep. 662, *Maule*, J., said, "the effect of the 21st section of 10 Geo. 4, c. 56, is to make the continuing and the new trustees joint tenants; it operates as a new appointment of all." And in the case of *Morrison* v. *Glover*, 19 L. J. (Exch.) 20, it was held that the trustees for the time being might sue, although the declaration showed that they were not the covenantees, and no assignment to them was stated, as the statute rendered any assignment unnecessary; and that a mortgage security taken in the name of the then trustees vested in the succeeding trustees.

trustee or trustees of such society, without other description; and no such action, suit, or prosecution shall be discontinued or shall abate by the death of such person, or his removal from the office of trustee, but the same shall and may be proceeded in by or against the succeeding trustee or trustees, as if such death or removal had not taken place; and such succeeding trustee or trustees, shall pay or receive the like costs as if the action or suit or prosecution had been commenced in his or their name or names, for the benefit of or to be reimbursed from the funds of such society (*a*).

(*a*) By sect. 7 of 21 & 22 Vict. c. 101, actions may also be brought against the secretary on behalf of the society.

Upon the construction of this section see *Cartridge* v. *Griffiths*, 1 B. & Ald. 57; and *Sharp* v. *Warren*, 6 Price, 131. (Appendix.) In *Doe* v. *Glover*, 15 Q. B. Rep. 103, it was held that where by the rules of a society no action was to be brought without the consent of the directors, the defendant, a member, could not allege that the action was brought without such consent. In *Timms* v. *Williams*, 3 Q. B. Rep. 413, (Appendix,) a question arose upon the construction of a similar clause in the Friendly Loan Act. There, an action was brought to recover the amount of a promissory note made payable to the "treasurer for the time being;" and it was held that the proceedings must be taken by the treasurer in office when such proceedings were commenced, and not by the party who was treasurer when the note was made. In a recent case, *R.* v. *Cain*, 1 Car. & M. 309, it was held on an indictment, that the property of a society must be laid as in the trustees. A. was indicted for embezzlement, as being the clerk and servant of B., C., and D. He was a member of, and secretary to, a properly certified Friendly Society, of which B., C., and D. were the trustees, and had from time to time received, though not in his capacity of secretary, funds belonging to the society, some part of which he had appropriated. Held, on a case reserved for the consideration of the court of criminal appeal, that A. was properly convicted of embezzlement as the clerk and servant of B., C., and D. *R.* v. *Proud*, 10 Weekly Rep. 62.

Limitation of his responsibility.

XX. Provided nevertheless, that no trustee or trustees of any such society shall be liable to make

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H. was in possession of a shop where goods were sold for the benefit of a Friendly Society, each member whereof partook of the profits and was subject to the loss arising from the shop. H., being himself a member, had also the sole management of the shop, and was answerable for the safety of all the property and money coming into his possession in the course of such management. W., also a member of the society, assisted in the shop without salary, and stole some sovereigns which H. had marked, and put into the till of the shop. Held, in an indictment charging W. with stealing the money, that the property was rightly laid in H. *Reg.* v. *Webster*, 10 Weekly Rep. 20.

An indictment alleged that prisoner was bailee of the monies of C., and that being so, he stole them, and it contained a count for a common larceny. It was proved that C. was the treasurer of a Friendly Society, that money in his hand as such was, under a resolution of the Society, given to the prisoner to pay into the bank, and that he fraudulently appropriated it. Held that a conviction under this form of indictment could not be supported. *R.* v. *Loose*, 8 Weekly Rep. 422.

The following cases also have a reference to this section. *Reg.* v. *George Burkinshaw*, 5 Justice of the Peace, p. 468. The prisoner was member of a society called the Norfolk Sick Society, to which the members contributed by weekly subscriptions. These subscriptions were kept in a box, which was deposited with William Travis, the landlord of the Royal Hotel, the place where the members of the society held their meetings. The prisoner, as president of the society, had access to this box, and abstracted from the box several sums of money. The prisoner was indicted for this felony, and the stolen property was laid in the indictment as the property of William Travis, the landlord of the Royal Hotel. Under these circumstances, it was held by Mr. Justice Wightman, that if the felony had been committed during the night, then the landlord might be said to have such a special property in the box, so deposited in his care, as to support the indictment; but that if the felony had been committed during the day, when the officers of the society had always access to the box for the purpose of taking out money, without consulting or mentioning the fact to the landlord of the hotel, then in such case the landlord had no such special property in the box, so as to support

good any deficiency which may arise or happen in the funds of such society, but shall be liable only for the monies which shall be actually received by him on account of such society.

Treasurer to give security.

XXI. The treasurer of every such society, and every treasurer hereafter appointed in any society, established under any of the repealed Acts, or any other officer who is required by the rules to give security, shall, before he take upon himself the execution of his office, become bound with one sufficient surety in a bond according to the form set forth in the third schedule to this Act, or give the security of a guarantee society established in London, in such penal sum as the society or the committee of management shall direct and appoint, conditioned for his just and faithful execution of his said office of treasurer, and for rendering a just

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the indictment. But in *R.* v. *Wymer*, 4 Car. & P. 391, where the box of the society was stolen from the room where the meetings were held, and it appeared that each steward had a key, and the landlord ought to have had one, but had not, it was held that in the indictment the box was properly laid in the landlord alone.

The personal liability of the members of a Friendly Society for goods supplied for the purposes of the society was decided in the case of *Cockerell* v. *Aucompte*, 3 Jurist, N. S. 845; 2 C. B. N. S. 440, (Appendix). In that case, a coal club, established under the Friendly Societies Act, contracted with a merchant for the supply of coals, and authorized the secretary to order them, and by a rule of the club, the coals were to be paid for out of the funds of the club in the hands of the treasurer, by means of an order given to the merchant on the next night after the delivery of the coals, signed by the secretary. And it was held that as the members did not furnish the secretary with funds to pay for the coals, but authorized a contract on credit, the contract so made must have been on their credit, and not on that of the secretary, and, consequently, that the defendant as a member was liable.

and true account of all monies received or paid by him on account of the said society, at such times as the rules of the said society shall direct and appoint, and at such times as he shall be required so to do by the trustee or trustees of the said society, or by a majority of the said committee of management, or by a majority of the members present at any meeting of such society; and every such bond shall be given to the trustee or trustees of the said society for the time being; and if the same shall at any time become forfeited, it shall be lawful for such trustee or trustees for the time being to sue upon such bond for the use of such society; and in Scotland such bond shall have the same force and effect as a bond there in use duly attested and completed, and containing a clause of registration for execution as well as for preservation in the books of Council and Sessions and other judge's books competent, and shall be registered in such books accordingly, with a view to diligence.

Treasurer to account.

XXII. Every such treasurer or other officer, whether appointed before or after the passing of this Act, at such times as by the rules of such society he should render such accounts as aforesaid, or upon being required so to do by the trustee or trustees of such society, or by a majority of the said committee of management, or by a majority of the members present at a meeting of the said society as aforesaid, within seven days after such requisition shall render to the trustee or trustees of the society, or to the said committee of management, or to the members of such society at a meeting of the society, a just and true account of all monies re-

ceived and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such society, which account the said trustee or trustees or committee of management shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustee or trustees the balance which on such audit shall appear to be due from him, and shall also, if required, hand over to such trustee or trustees all securities and effects, books, papers, and property of the said society in his hands or custody; and if he fail to do so the trustee or trustees of the said society may sue upon the bond aforesaid, or may sue such treasurer in the county court of the district (*a*), or in any of the superior courts of common law (*b*), or in any other court having jurisdiction, for the balance appearing to have been due from him upon the account last rendered by him, and for all the monies since received by him on account of the said society, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said society; and in such action the said trustee or trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client (*c*)

(*a*) See sect. 1 of 20 & 21 Vict. c. 101.

(*b*) See *Sinden* v. *Bankes*, 30 L. J. (Q. B.) 102.

(*c*) The treasurer of a society is not liable for monies received by him on account of the society of which he is robbed

Property how recovered, if the officer die, or become bankrupt or insolvent.

XXIII. If any person already appointed or employed or hereafter to be appointed or employed to or in any office in any Friendly Society established under this Act or under any of the Acts hereby repealed, whether such appointment or employment was before or after the legal establishment of such society, and having in his hands or possession, by virtue of his office, any monies or property whatsoever of such society, or any deeds or securities belonging to such society, shall die, or become bankrupt or insolvent, or have any execution or attachment or other process issued against him or any part of his property, or shall have any action or diligence raised against his lands, goods, chattels, or effects, or property or other estate, heritable or moveable, or shall make any assignment, disposition, assignation, or other conveyance for the benefit of his creditors, the heirs, executors, administrators, or assignees of every such officer, and every other person having or claiming right to the property of such officer, and the sheriff or other person executing such process, and the party using such action or diligence respectively, shall, upon demand

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by violence, and without fault of his own. *Walker* v. *The British Guarantee Association*, 18 Q. B. Rep. 277. In that case, the treasurer of a Benefit Building Society, within the statutes 6 & 7 Will. 4, c. 32, and 10 Geo. 4, c. 56, had covenanted with the society's trustees for the faithful discharge of his duty and for the due accounting of all monies received by him as treasurer on the society's account; but before he was able to pay the monies received by him to the trustees he was robbed of them by violence, and without fault of his own, and it was held in an action against his sureties that the treasurer had not violated his obligation, such obligation, being that only of a bailee.

in writing made by the treasurer or by the trustee, or any two of the trustees of such society, or any person appointed at some meeting of the society to make such demand, deliver and pay over all such monies, property, deeds, and securities belonging to such society to such person as such treasurer or trustees shall appoint, and shall pay, out of the estate, assets, or effects, heritable or moveable, of such officer, all sums of money due which such officer shall have received, before any other of his debts are paid, and before any other claims upon him shall be satisfied, and before the money directed to be levied by such process as aforesaid, or which may be recovered or recoverable under such diligence, is paid over to the party issuing such process or using such diligence; and all such assets, lands, goods, chattels, property, estates, and effects shall be bound to the payment, discharge, and satisfaction of such claims (*a*).

(*a*) The circumstance of the society not having audited the treasurer's accounts, held not to deprive it of the priority given by this section, and the filing and service of a bill by the trustees to enforce such right, is held to be a demand in writing within the section. *Absalum* v. *Gethin*, 11 Weekly Rep. 332.

Section 167 of the Bankrupt Law Consolidation Act, 1849, which is not repealed by the Act of 1861, contains similar provisions, and is as follows: "That if any person already appointed or employed, or who may be hereafter appointed or employed in any office in any society established under any of the Acts relating to Friendly Societies, and being intrusted with the keeping of the accounts, or having in his hands or possession by virtue of his office or employment, any monies or effects belonging to such society, or any deeds or securities relating to the same, shall have been or shall become bankrupt, the court shall, upon application made by the order of any such society, or any committee thereof, or the major part of them assembled at any meeting thereof, order payment and delivery over to be made to such society or to such person as

Punishment of fraud in withholding money, &c.

XXIV. If any officer, member, or other person, being or representing himself to be a member of such society, or the nominee, executor, administrator, or assignee of a member thereof, or any person

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such society or committee may appoint, of all monies and other things belonging to such society; and shall also order payment out of the estate and effects of the bankrupt, of all sums of money remaining due which the bankrupt received by virtue of his said office or employment, before any other of his debts are paid and satisfied." These sections apply only to monies received by officers by virtue of their office, and independent of contract. Thus it was held upon the construction of the 33 Geo. 3, c. 54, s. 10, (similar to this section,) that the section did not apply to debts due from officers individually, and not in their official characters. *Ex parte The Amicable Society of Lancaster*, 6 Ves. 98, (see Appendix,) nor to money held by a person not appointed treasurer, or by the treasurer upon notes carrying interest; *Ex parte Ashley*, 6 Ves. 441; *Ex parte Ross*, Ib. 802; *Ex parte Stamford Friendly Society*, 15 Ves. 280; and see *Ex parte Buckland*, 1 Buck. 514; *Anon.* 6 Mad. 98. (See Appendix.) And where the treasurer of a savings bank was partner in a bank into which all monies received by the manager were paid to the credit of the trustees, and interest allowed thereon, it being the custom of the bankers to allow interest upon deposits, and the treasurer acknowledged from time to time the balance to be monies in his hands as treasurer, it was held under a similar clause in a Savings Bank Act to that now under consideration, that such balance was to be deemed as in his hands as treasurer, at the time of his bankruptcy, and that the trustees were entitled to recover the amount in full. *Ex parte Riddell*, 3 Mont. D. & G. 80. In the case, however, of *Ex parte Jardine*, 10 Law J., N. S. (B.) 11; 1 Fonblanque, 324, it was held, that an actuary of a savings bank, who by the rules had no power to receive money, but was allowed to do so by the manager, could not be said to have received it by virtue of his office, and, therefore, that the trustees of the bank had no priority over the other creditors. Where a joint fiat in bankruptcy was issued against the treasurer of a savings bank and his co-partner, it was held, under the clause in the Savings Bank Act, that the bank could only claim a priority of payment in respect of monies due from the treasurer out of his separate estate, and that they had no claim against the joint estate, although the separate estate was not sufficient to pay the whole amount. *Ex parte Appach*, 1 Mont. D. & D. 83.

whatsoever, by false representation or imposition, shall obtain possession of any monies, securities, books, papers, or other effects of such society, or having the same in his possession shall withhold

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The following cases apply to these sections:—

The rules of a Friendly Society provided that the treasurer retaining upwards of £10 more than seven days after he was required to pay it over, should be excluded from the society. They also provided that a particular firm should be the bankers of the society, with power for a general meeting to appoint other bankers. It was held that the bankers for the time being were not officers, so as upon their bankruptcy to entitle the society to payment in full. *Ex parte Harris*, 1 De Gex, 162. Country Bankers appointed by a Friendly Society to receive monies and to transmit them to their London agents for the purpose of investment in the Bank of England to the account of the Commissioners of the National Debt, are not to be considered as appointed to an office within the meaning of the Act 4 & 5 Will. 4, c. 40, s. 12. *Ex parte Whipham*, 3 Mont. D. & D. 564. On the appointment of the bankrupt as treasurer of a Friendly Society, it was agreed that of the funds then in hand, she was to pay interest for £120. It was held that this was not to be considered as a loan to her, but that it was in her hands and possession by virtue of her office of treasurer, within the meaning of the 4 & 5 Will. 4, c. 40, s. 12, and that the assignees were bound to pay over the amount to the society. *Ex parte Ray*, 3 Dea. 537. The treasurer of a Friendly Society having a debt due to him from a person who offers a security, takes the security in the name of the society, and retains the amount of his debt out of the society's monies in his hands. Some time afterwards he becomes a bankrupt, having in the meantime debited himself annually in his accounts with the society with the interest on the amount for which the security was taken. The security proves insufficient, and was not of the description or taken in the manner required by the Friendly Societies Act. It was held that the omission on the part of the society to take steps for setting aside the transaction, and calling in the money before the bankruptcy, did not deprive them of their statutory right to be paid in full before the other creditors. *Ex parte Barge*, 1 Mont. D. & D. 540.

By the rules of a Friendly Society it was provided that there should be appointed a treasurer or treasurers, in whose hands should be deposited all the cash belonging to the society, until the same should be placed out at interest; and that as soon

or misapply the same, or shall wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such society, or any part thereof, it shall be lawful in England for any justice of the peace, acting in the county or borough in which the place of business of such society shall be situated, upon complaint made by any person on behalf of such society (*a*), to summon the person against whom such complaint is made to appear at a time and place to be named in such summons; and any two justices present at the time and place mentioned in such summons shall proceed to hear and determine the said complaint, in manner directed by the Act passed in the eleventh and twelfth years of Her present Majesty, chapter forty-three; and in Scotland every such offence may be prosecuted by summary complaint at the instance of the procurator fiscal of the county, or of the society, with his concurrence, before the sheriff;

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as a sufficient sum should be collected, it should (after leaving in the club-box a sufficient sum to pay the sick and other expenses of the society,) be deposited in the hands of the treasurer or treasurers of the society; and that the clerk and two stewards should take the same to the bank. No formal appointment of treasurer was made, but the monies of the society were paid into a bank. It was held that the bankers were not employed as officers of the society so as to entitle the society, upon their bankruptcy, to payment in full. *Ex parte Orford*, 1 De Gex, M. & G. 483, 1 Id. B. C. 83.

Where a bankrupt had in his possession at the time of his bankruptcy monies belonging to a Friendly Society, not by virtue of his office as treasurer, but *alieno jure*, as by way of loan from the society, for which the society had his promissory note, held that the society would be entitled to be paid in full out of the bankrupt's estate, in priority over the other creditors, under sect. 167 of the 12th & 13th Vict. 106, *Ex parte Long Ashton Friendly Society*, 5 L. T., N. S., 370.

(*a*) By 23 & 24 Vict. c. 58, s. 9, this application may be made by the Registrar.

and if the said justices or sheriffs respectively shall determine the said complaint to be proved against such person, they shall adjudge and order him to deliver up all such monies, securities, books, papers, or other effects to the society, or to repay the amount of money applied improperly, and to pay, if they think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said justices or sheriffs may order the said person so convicted to be imprisoned in the common gaol or house of correction, with or without hard labour, for any time not exceeding three months: Provided, that nothing herein contained shall prevent the said society, or in Scotland Her Majesty's advocate, from proceeding by indictment against the said party: Provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act (*a*).

(*a*) Where an officer of a society had received as such monies belonging to the society, and afterwards executed an assignment for the benefit of his creditors, and his assignees had enough to repay the amount, but the specific monies so received were not traced to the assignees, the assigness were held not liable under this section. *O'Donnell Ex parte*, 1 Law Rep. Q. B. 274. (See Appendix.)

By sect. 1 of 21 & 22 Vict. c. 101, the provisions of this section are extended to Ireland, and jurisdiction is thereby given to a justice or two justices of the peace there, as the case may be, and the complaint is to be heard and determined, as directed by the 14 & 15 Vict. c. 93; and by sect. 3, the provisions of this section are extended to societies entitled to the benefit of sect. 11.

In proceedings before justices under this section, the complaint must be made and information laid within six calendar

Rules to be made.

XXV. Before any Friendly Society shall be established under this Act, the persons intending to

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months from the time when the matter of such complaint or information arose. 11 & 12 Vict. c. 43, s. 11; 12 & 13 Vict. c. 70, s. 11. And by 2 & 3 Vict. c. 71, s. 14, and 11 & 12 Vict. c. 43, s. 34, the lord mayor of London, and any alderman sitting at the Mansion House or at Guildhall, may do alone any act which may, under this section, be done by more than one justice; and by 11 & 12 Vict. c. 43, s. 33, any one metropolitan police magistrate may do alone any act to be done by one or more justice or justices. And by 21 & 22 Vict. c. 73, a stipendiary magistrate may do alone all acts authorized by law to be done by two justices.

The remedy given by this section applies where the monies, &c., were the property of the society previously to its enrolment, as will be seen by the case *Ex parte Gordon*, 16 Justice of the Peace, p. 767. In that case a rule *nisi* for a *certiorari* was moved for, to bring up a conviction of Mr. Alderman *Carrol*, made under 13 & 14 Vict. c. 115, s. 26, by which Gordon was ordered to pay over to certain persons named therein the sum of £1,014 5*s.* 6*d.* The *certiorari* was taken away, and this rule could not therefore be granted, unless there was entire want of jurisdiction; but there was a want of jurisdiction, both as to the facts and upon the face of the conviction itself. *First*, as to the facts:—In and before 1848, Gordon had been the treasurer of a certain society of Foresters; in that year there was a division in the society, which was in consequence split into two. Gordon remained with the larger division, and continued to act as treasurer to such division. At the time of the division Gordon held, as treasurer to the entire society, a considerable sum of money. He continued to hold this money after the division, and permitted the society, of which he remained a member, to enjoy the proceeds of it; but he considered that he still held it as a trustee for the entire society. In December, 1850, the said larger division of the original society was duly registered, and Mr. Alderman *Carrol* had convicted Mr. Gordon of withholding this money from such registered society, and had ordered him to pay over to certain officers of the society the sum of £1,014 5*s.* 6*d.*, being double the sum so alleged to have been withheld. It was now submitted that the magistrate acted without jurisdiction, as the money withheld was clearly the money of the original entire society, and not of the divided society. And, *secondly*, that the conviction was bad for want of jurisdiction on the face of it, as it did not show, as required by the 26th section of the Act, that it was made on the complaint of any officer of the society appointed for that purpose, but simply that it was made on the complaint of certain officers

establish the same shall agree upon and frame a set of rules for the regulation, government, and manage-

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of the society. The court held that on the first point there would be no rule, as the magistrate had jurisdiction over the subject-matter, and the facts were for his determination, but granted a rule on the other point. The summary power given by this section does not prevent proceedings by indictment, although the offender may be a member of the society. (*Rex* v. *Hall*, 1 Moo. Cr. Cas. 474, (see Appendix,) where it was held to be embezzlement for a member, who was also the secretary of a society, fraudulently to withhold money received on account of the society.

It was also decided in the before-mentioned case of *Sharpe* v. *Warren*, (see Appendix), that *assumpsit* for money had and received might be maintained against one who had been a member, for money intrusted to his keeping by the rest of the society.

The remedy given by this section does not take away the common law remedy by action. *Sinden* v. *Bankes*, 30 L. J. (Q. B.) 102.

In the case *In re Briton Friendly Society*, Vice-Chancellor *Stuart*, 20th Nov. 1852, MS., a petition was presented by the officers of the above Friendly Society, established at Llanegwad, in the county of Carmarthen, and enrolled under the 10 Geo. 4, c. 56, seeking to enforce payment by two members of the society of a sum of money, part of the funds of the society, with which they had been intrusted by the other members. It appeared that at a general meeting, held in the early part of 1850, it was resolved that the funds of the society should be got in and divided, and then that the society should be dissolved. Subsequently a portion of the funds had been delivered to the respondents, in order that they might deposit it in the bank at Carmarthen. The money was accordingly deposited by them in the bank, but they subsequently drew it out, and, notwithstanding frequent demands made upon them, they had not replaced it, and it was now sought to enforce payment of such monies. The court said the justice of the case was clear, and accordingly made the order asked for.

Upon an indictment for obtaining money under false pretences, it appeared that in the month of July the prisoner asked the prosecutrix to belong to a burial club, which he praised as strong and respectable, and said had £7,000 in a bank. He did not then induce the prosecutrix to become a member. A month afterwards he went again, and "still praised the club," but said nothing of the £7,000. The prosecutrix then subscribed:—Held, that the jury might connect

ment of such society; and in such rules they may, amongst other things, make provision for appointing a general committee of management of such society, and delegating to such committee all or any of the powers given by this Act to the members of Friendly Societies formed or established under or by virtue of the same; and such rules shall set forth,

1. The name of the society and place of meeting for the business of the society (*a*):

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the two statements, and the statement as to the £7,000 being false, they found that the prisoner had obtained the money by that false pretence. *Reg.* v. *Welman*, 1 Cr. Cas. Res. 189.

Reg. v. *Woolley*, 1 Den. 559. Obtaining money by the secretary of a society from a member, by telling him he owed it to the club, whereas he owed part only: Held, to be obtaining money by false pretences.

R. v. *Miller*, 2 Mood, 249. Where the clerk of a Friendly Society embezzled rents collected by him in the capacity of clerk:—Held, that he might be stated to be the clerk to the trustees, to whom the house had been conveyed, whether appointed by them or by the society, and that it was no defence that the affairs of the society had not been conducted according to the statute. See also *R.* v. *Proud*, 31 L. J. (M. C.) 71 (Appendix).

Trespass does not lie against a magistrate for anything done by him in the discharge of his duty, unless he be made acquainted with every fact necessary to enable him to determine when called on to act. Where, therefore, the treasurer of a benefit society brought such an action against a magistrate, for issuing a warrant of distress against him upon a previous order of two magistrates for the relief of a member, in pursuance of the statute 33 Geo. 3, c. 54, s. 15:—Held, that the action could not be maintained, it appearing on the face of the order that the treasurer made no defence, the defendant's jurisdiction not having been questioned at the time, and the treasurer having neglected to present to his notice a rule of the society, which directed all disputes between its members to be referred to arbitration, and which rule was confirmed by sect. 16 of the statute, whereby the award was made conclusive, without being subject to the control of the magistrate. But *quære*, whether or not under such rule it was imperative to proceed only by arbitration. 3 Bing. 78. *Pike* v. *Carter*, 10 Moore, 376. See also *Sinden* v. *Banks*, 7 Jur. 913, upon this *quære*.

(*a*) A meeting cannot be held away from the place of busi-

2. The whole of the objects for which the society is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such society:

3. The manner of making, altering, amending, and rescinding rules:

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers (*b*):

5. A provision for the investment of the funds, and for an annual periodical audit of accounts:

6. The manner in which disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled:

And the rules of every such society shall provide that all monies received or paid on account of each and every particular fund or benefit assured to the members thereof, their husbands, wives, children, fathers, mothers, brothers or sisters, nephews or nieces, for which a separate table of contributions payable shall have been adopted, shall be entered in a separate account, distinct from the monies received and paid on account of any other benefit or fund,

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ness. In *re Patrick's United Assurance Society*, decided in the Q. B. 5th June, 1865.

(*b*) A *mandamus* held not to lie to restore an officer removed by a resolution of the society, that office not being one of a freehold nature. *Evans* v. *Heart of Oak Society*, Q. B. 29 Jan. 1866.

and also that a contribution shall be made to defray the necessary expenses of management, and a separate account shall be kept of such contributions and expenses (*b*).

Copies to be sent to the Registrar, and his certificate obtained.

XXVI. Two printed or written copies of such rules, signed by three of the intended members and the secretary or other officer, shall be transmitted

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(*b*) For forms of these rules, see Appendix. Besides the rules mentioned in this section, the society must, if it intends taking advantage of the 16th section, make a rule setting forth how the money is to be raised.

In framing the rules of a Friendly Society, care should be taken that they are not based on erroneous principles, and that the intended contributions will be sufficient for the payments authorized to be made thereout; and the only safe way to secure this, is by submitting them to an actuary. In *Reeve* v. *Parkins*, 2 Ja. & W. 90, an injunction was granted to restrain payments by a Friendly Society, whose rules were founded on erroneous principles tending to exhaust its funds; and in *Pearce* v. *Piper*, 17 Ves. 1, where the rate of subcription required by the rules was too low, and no adequate remedy was provided by the articles, inquiries were directed: 1st. To ascertain the state of the society, the defect of the plan, &c. 2nd. To provide a remedy by additional subscriptions, by paying the arrears, and providing for the present and future annuities See also *Buckley* v. *Carter*, 17 Ves. 15.

Where the rules of a society contained a provision for the appointment of trustees from time to time, but did not expressly contain a power of removal, it was held that such a power was to be inferred. *Hodges* v. *Wale*, V. C. Wood, 22 Law Times, 144, (Appendix.)

Great strictness must be observed in following the rule as to the appointment of officers. In the case of *Roberts* v. *Price*, 4 C. B. Rep. 231, the rules vested in a committee of eleven the power of electing a treasurer and other officers. At a meeting of the committee, when ten only were present, the eleventh not having received notice, the defendant, the former treasurer, was removed, and the plaintiff appointed in his stead by a majority of votes. But it was held that the election was void, although the absent committeeman had for a considerable period ceased to attend the meetings, and had intimated an intention of not to attend any more, and although the defendant himself had demanded a poll.

to the Registrar aforesaid; and the said Registrar shall advise with the secretary or other officer, if required, for the purpose of ascertaining whether the said rules are calculated to carry into effect the intentions and object of the persons who desire to form such society; and if the Registrar shall find that such rules are in conformity with law and with the provisions of this Act, he shall give a certificate in the form set forth in the second schedule to this Act, and shall return one of the said copies to the said society, and shall keep the other in such manner as shall from time to time be directed by one of Her Majesty's Principal Secretaries of State, and for which certificate no fee shall be payable to the said Registrar; and all rules, when so certified as aforesaid, shall be binding on the several members of the said society: Provided always, that it shall not be lawful for the said Registrar to grant any such certificate to a society assuring to any member thereof a certain annuity or certain superannuation, deferred or immediate, unless the tables of contributions payable for such kind of assurance shall have been certified under the hand of the actuary to the Commissioners for the Reduction of the National Debt, or by an actuary of some life assurance company established in London, Edinburgh, or Dublin, who shall have exercised the profession of actuary for at least five years, and such certificate be transmitted to the Registrar, together with the copies of the rules aforesaid.

Actuary's certificate to be sent with the copies in case of tables of annuities.

XXVII. After the rules of a Friendly Society shall have been so certified by the Registrar as

Rules may be altered, amended,

rescinded, or new rules made.

aforesaid, it shall be lawful for such society by resolution at a meeting specially called for that purpose (*a*), to alter, amend, or rescind the same or any of them, or to make new rules; and it shall be lawful for any Friendly Society formed and established under any of the Acts hereby repealed to alter, amend, or rescind the rules by which their society is governed, regulated, or managed, or to make new rules: Provided always, that two copies of the proposed alterations or amendments, and of such new rules, signed by three members of such society, and the secretary or other officer, shall be transmitted to the said Registrar, to one of which shall be attached a declaration (*b*) by the secretary or one of the officers of such society, that in making the same the rules of such society respecting the making, altering, amending, and rescinding rules, or the directions of the Act under which such society was established, have been duly complied with; and if the said Registrar shall find that such alterations, amendments, or new rules are in conformity with law, he shall give to the society a certificate in the form set forth in the schedule to this Act, and return one of the copies to the society, and shall keep the other, with the rules of such society, in his custody, and for which certificate no fee shall be payable to the said Registrar, and as against such member or person such certificate shall be conclusive of the validity thereof;

(*a*) It was held in *Kerr* v. *Wilkie*, 8 Weekly Rep. 286, that where notice of a meeting has been properly given there is no necessity for notice of its *bonâ fide* adjournment.

(*b*) For form of declaration, see Appendix.

and all rules, alterations, and amendments, when so certified as aforesaid, shall be binding on the several members of the said society, and all persons claiming on account of a member or under the said rules; but unless and until the same shall be so certified as aforesaid such rules, alterations, and amendments shall have no force or validity whatsoever (*c*).

(*c*) Until the rules or alterations of rules are duly certified they cannot be legally acted upon. This point arose in *Battey* v. *Townrow*, 4 Camp. 5, (Appendix) where it was held, that an action could not be maintained by the trustees of a Friendly Society, elected under new regulations, until they had been confirmed according to the statute, as the plaintiffs were not the legal trustees of the society for the time being, and the effect sought to be recovered had never vested in them. In *Reg.* v. *Godolphin*, 8 Ad. and El. 338, (Apendix,) it appeared that certain alterations were made in the rules of a Friendly Society established under the 33 Geo. 3, c. 54. The altered rules, however, were never enrolled, and it was held that the rules as altered could not legally be acted upon; and in giving judgment the court said it would be well if it were generally understood, that these societies cannot depart from their established rules, or neglect to comply with the statute in the mode of altering or repealing them, without exposing their property to damage, and themselves to great expense, loss, and inconvenience. A doubt was also entertained as to whether the original rules continued in force even for the purpose of holding the society legal under the statute in consequence of the case *Ex parte Norrish*, Jac. 162, but in the case of *Reg.* v. *Cotton*, 15 Q. B. Rep. 569; 19 Law J., N. S. (Q. B.), 233; where the rules had been approved of, according to the 33 Geo. 3, c. 54, and alterations made therein, but not properly enrolled, and it was contended, on the strength of the above cases, that the original rules were no longer in existence, the court held otherwise; and in giving judgment said, "The society was duly enrolled; how has it ceased to be so? Alterations have been made from time to time, but not properly; and that being so, the society must still be considered a Friendly Society within the 33 Geo. 3, c. 54. This case is very different from *R.* v. *Godolphin*; there the rules were regularly altered, and a new set adopted. It is too much to say that from the time the new rules were improperly made

When place of meeting is altered notice to be sent to Registrar.

XXVIII. Whenever any Friendly Society established under this Act or under any of the Acts hereby repealed shall change its place of business, notice of such change, under the hands of two of the trustees or three members and secretary or other officer, shall within fourteen days thereafter be sent to the said Registrar.

Circulating false copies of rules, &c. a misdemeanor.

XXIX. If any person shall give to any member of a Friendly Society established under this Act or under any of the said repealed Acts, or to any

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the society ceased to be; if that is not so, it subsisted under the rules which were enrolled; the objection to the new rules may be got rid of by having them enrolled. The question of agreement is met by the fact, that the rules of the society could only be altered by certain proceedings which were ineffectually taken." And in *Meredith* v. *Whittingham*, 1 C. B. Rep. (N. S.), 216, where a society had enrolled its rules under the 10 Geo. 4, c 56, and shortly afterwards had framed new rules, which were never enrolled or certified, it was held, that the society was a subsisting society under the original rules, by virtue of 18 & 19 Vict. c. 63, s. 2. All rules and alterations of rules are binding on the members from the time of their being duly certified; *Bradburne* v. *Whitbread*, 6 Scott, N. C. 283; and in *Dewhurst* v. *Clarkson*, 3 E. & B. 194, (Appendix) it was decided that the certificate of the Registrar is conclusive as to the validity of any new rules or alterations of rules, although it was proved that the rule of the society as to the manner of making new rules had not been complied with; but the certificate will not make an illegal rule legal. *Kelsall* v. *Tyler*, 11 Exch. Rep. 560. It was also held, in *Pare* v. *Clegg*, 30 L. J. (Ch.), 742, 9 Weekly Rep. 795, that a society though irrational, if duly certified, was to be considered legal as regards contracts with members and third parties, but see *R.* v. *Davis*, 1 Weekly Notes, 25. Societies established under any of the repealed Acts cannot alter their rules, except in the manner pointed out by such rules, or the Act under which they are enrolled, as the declaration required by sect. 27 must state, that in altering the rules the directions of the Act under which the society was established have been complied with.

person intending or applying to become a member of such society, a copy of any rules, or of any alterations or amendments of the same, other than those respectively which have been enrolled with any clerk of the peace or certified by the Registrar, with a copy of his certificate appended thereto, under colour that the same are binding upon the members of such society, or shall make any alterations in or addition to any of the rules or tables of such society, after they shall have been respectively enrolled or certified by the Registrar, and shall circulate the same, purporting that they have been duly enrolled or certified under this or any of the said repealed Acts, when they have not been so duly enrolled or certified, every person so offending shall be deemed guilty of a misdemeanor.

Rules, how received in evidence.

XXX. All rules and tables of any society established under this Act or any of the said repealed Acts, and all alterations and amendments thereof, and all copies thereof, or extracts therefrom, and all writings and documents relating to a Friendly Society, and purporting to be signed by the Registrar, shall, in the absence of any evidence to the contrary, be received in all courts of law and equity, and elsewhere, without proof of the signature thereto (*a*).

On death of member, sum under 50*l.* may be paid without administration.

XXXI. When, on the death of any member of a society established under this Act, or any of the said repealed Acts, a sum of money not exceeding

(*a*) A printed copy of the rules, with the name of the Registrar printed at the top, examined with the original copy, signed and sealed by the Registrar, but which was not produced, was admitted as proof of the due enrolment of the society. *R.* v. *Webster*, 10 Weekly Rep. 20.

fifty pounds shall become payable, the same shall be paid by the trustees of such society to the person directed by the rules thereof, or nominated (*a*) by the deceased, in writing, deposited with the secretary (such person being the husband, wife, father, mother, child, brother or sister, nephew or niece of such member); and in case there shall be no such direction or nomination, or the person so nominated shall have died before the deceased member, or in case the member shall have revoked such nomination, then such sum shall be paid to the person who shall appear to the said trustees to be entitled under the Statute of Distributions to receive the same, without taking out letters of administration in England or Ireland, and without confirmation in Scotland (*b*): Provided, that wherever the trustee or trustees of any such society, after the decease of any member

Indemnity to trustees.

(*a*) In *Clayton* v. *Owen*, 10 Weekly Rep. 770, a question arose, which it was not necessary to decide, whether the nominee is entitled to the sum assured as against creditors.

(*b*) For the persons entitled under the statute see Appendix. By the 27 & 28 Vict. c. 56, ss. 4, 5, no stamp duty is chargeable on any probate of a will, or letters of administration, with or without a will annexed, granted in England or Ireland, or inventory to be exhibited and recorded in any Commissary Court in Scotland, of the estate and effects of any person deceased, in any case where the whole estate and effects of the deceased person dying after the 25th July 1864 (exclusive of what he shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially), shall be sworn not to exceed, and shall not actually exceed in value the sum of 100*l*. This provision will be found of great benefit to depositors in savings banks and members of Friendly Societies, particularly with reference to the easy and comparatively inexpensive mode of now obtaining, by personal application at 12, Great Knight Rider Street, Doctor's Commons, London, or at the office of the district registrar in the country, a probate or letters of administration.

thereof, shall have paid and divided any such sum of money to or amongst any person or persons who shall at the time of such payment appear to such trustee or trustees to be entitled to the effects of any deceased member who has died intestate, without having appointed any nominee as aforesaid, the payment of any such sum shall be valid and effectual with respect to any demand from any other person or persons as next of kin of such deceased member, or as the lawful representative or representatives of such member, against the funds of such society or against the trustees thereof; but nevertheless such next of kin or representative shall have his or her lawful remedy for such money so paid as aforesaid against the person or persons who shall have received the same.

Funds, how invested.

XXXII. The trustee or trustees of every Friendly Society established under this Act or any of the said repealed Acts shall from time to time, with the consent of the committee of management of such society, or of a majority of the members of such society, present at a general or special meeting thereof, or in accordance with the rules of such society, invest the funds of such society, or any part thereof, to any amount, in any savings bank, or in the public funds, or with the Commissioners for the Reduction of the National Debt, as hereinafter mentioned, or in such other security as the rule of such society may direct, not being the purchase of house or land, (save and except the purchase of buildings wherein to hold the meetings or transact the business of such society, as hereinbefore mentioned,) and not being the purchase of shares in

any joint stock company or other company, with or without charter of incorporation, and not being personal security, except in the case of a member of one full year's standing at least, and in respect of a sum not exceeding one-half the amount of his assurance on life, such member providing the written security of himself and two satisfactory sureties for repayment, and in case of such member's death before repayment, the amount of such advance, with interest, may be deducted from the sum so assured, without prejudice in the meantime to the operation of such security (*a*).

Funds may be invested with the Commissioners of the National Debt.

XXXIII. Every Friendly Society established under this Act which does not assure the payment in any event of a sum exceeding two hundred pounds, or an annuity exceeding thirty pounds per annum, may pay any sum of money not less than fifty pounds into the Bank of England or Ireland, to the account of the Commissioners for the Reduction of the National Debt, upon the declaration of the trustee or of the trustees, or any two or more of them, that such monies belong exclusively to the said society; and the cashier of the Bank of Eng-

(*a*) Under this section, the funds may be lent on mortgage to any of the society's members. This point was decided in *Morrison* v. *Glover*, 4 Exch. Rep. 431; 19 Law J., N. S. (Exch.), 20, where it was held that under the 13th section of 10 Geo. 4, c. 56, a Benefit Building Society might lend money upon mortgage security to one of its members, and that such security would vest in the trustees for the time being; and in *Cutbill* v. *Kingdom*, 1 Exch. Rep. 494, the court said it was conceded that a society might lend money to persons not members, and they did not see any provisions excluding loans to members; but that on the contrary, it was quite within the scope of the society.

land is hereby required to receive all such monies and to place the same to the account raised in the name of the said Commissioners in the book of the bank, named "The Fund for Friendly Societies;" and if such declaration shall not be true, then and in every such case the sum of money so paid in on such declaration shall be forfeited to the said Commissioners, and shall be applied by them in the manner directed by any Act or Acts for the time being in force relating to savings banks with respect to the account of such banks; and the regulation of receipts, certificates, or orders concerning savings banks shall be deemed applicable to monies paid in as aforesaid under the authority of this Act, as if the same had been herein repeated; and every such society, on paying money directly into the bank as aforesaid, shall be entitled to receive receipts bearing interest at the rate of twopence per centum per diem: Provided, that every society which shall deposit any part of its funds in any savings bank, or with the Commissioners for Reduction of the National Debt, shall furnish to the said Commissioners from time to time such accounts as they may require in reference to the funds so deposited.

What interest old societies shall have.

XXXIV. Every society already established under any of the Acts hereby repealed, which shall have heretofore invested any part of its funds with the Commissioners for the Reduction of the National Debt, shall be entitled to pay into the Bank of England or Ireland, in sums of not less than fifty pounds, money received from members on account of assurances made before the passing of this Act,

and to receive receipts for the same bearing interest at such rate or rates as such society has hitherto been entitled to receive on account of such assurances; that is to say, for money invested with the Commissioners by any society legally established before the twenty-eighth day of July in the year one thousand eight hundred and twenty-eight, on account of any assurance made before the fifteenth day of August in the year one thousand eight hundred and fifty, threepence per centum per diem; and on account of any assurance effected after that day, twopence per centum per diem; and for money invested with the Commissioners by any society established since the fifteenth day of July, one thousand eight hundred and fifty, the sum of twopence per centum per diem: Provided, that the trustee of every society which shall have invested or shall invest any part of its funds with the said Commissioners shall furnish from time to time such accounts and returns as the said Commissioners shall require, and shall satisfy the said Commissioners that they are legally entitled to receive such interest as aforesaid, and to make such further investment (*a*).

Investment with Commissioners of money withdrawn.

XXXV. Where any Friendly Society shall withdraw money invested by them with the Commissioners for the Reduction of the National Debt, such society shall not be entitled to make any further deposit with the said Commissioners without the consent of the said Commissioners, or of the

(*a*) If these returns are not made, the interest payable is to cease. 23 & 24 Vict. c. 58, s. 8.

Comptroller General or Assistant Comptroller under them.

Transfer of stock.

XXXVI. Whenever it shall happen that any person, being or having been a trustee of any society established under this Act or any Act hereby repealed, and whether he shall have been appointed before or after the legal establishment thereof, in whose name any part of the several stocks, annuities, and funds belonging to any such society transferable at the Bank of England or Ireland, or in the books of the governor and company of the Bank of England or Ireland, or in any savings banks, is or shall be standing, shall be out of England or Ireland or Scotland respectively, or shall have been removed from his office of trustee, or shall be a bankrupt, insolvent, or lunatic, or it shall be unknown whether such trustee is living or dead, it shall be lawful for the Registrar, after receiving an application in writing from the secretary of the society and three members thereof, and upon proof satisfactory to such Registrar, to direct the accountant-general or other proper officer for the time being of the said governor and company of the Bank of England or Ireland, or of any savings bank, to transfer in the books of the said company or of the said savings bank such stocks, annuities, or funds, standing as aforesaid, into the name of the trustee who shall be newly appointed, and to pay to him from time to time the dividends thereof; and if one of two or more such trustees shall die, or be removed from his office of trustee, or become bankrupt or insolvent, it shall be lawful for the Registrar, on the like application, to direct that the other or others of the trustees shall

transfer such stock, annuities, or funds into the name of such person as may have been appointed in his stead, jointly with the continuing trustee or trustees (*a*).

Power of attorney, &c. not liable to stamp duty.

XXXVII. No copy of rules, nor power, warrant, or letter of attorney granted by any person as trustee of any society established under this Act or any of the Acts hereby repealed, for the transfer of any share in the public funds standing in the name of such trustee, nor any order or receipt for money contributed to or received from the funds of any such society, by any person liable or entitled to pay or receive the same by virtue of the rules thereof or of this Act, nor any bond to be given to or on account of any such society, or by the treasurer or any officer thereof, nor any draft or order, nor any form of policy, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other document whatever required or authorized by or in pursuance of this Act or the rules of any society, shall be liable to stamp duty: Provided, that no exemption from any of the duties granted by any Act or Acts relating to stamp duties shall be deemed to ex-

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(*a*) This section does not apply where the society has been dissolved, though its affairs are not wound up, as may be seen from the case *In re The Eclipse Mutual Benefit Society*, 1 Kay, App. 30, (Appendix), in which it was held that, after a society had been dissolved, though its affairs were not wound up, the Court of Chancery had no jurisdiction upon petition to appoint a person to convey property in the possession of a trustee, who refused to concur with his co-trustees in realising it, for the purpose of having it distributed among the members.

tend to any society which shall assure the payment of money exceeding two hundred pounds, or which shall assure the payment of any money on the death of a member to any person, except executors, administrators, or assigns of such member or the husband, wife, father, mother, child, brother, sister, nephew, or niece of such member (*b*).

Limitation of exemptions to societies not assuring above 200*l*.

XXXVIII. If any person shall become a member of more than one society, whereby certain benefits shall accrue on account of the same kind of assurance from more than one society, it shall not be lawful for him, or for any person entitled through or under him or by reason of his membership, or for any number of such persons in the aggregate, to receive more than two hundred pounds, or, in the case of annuities, thirty pounds a year, from such societies collectively; and in any case where a person shall so as aforesaid be a member of more than one society, and he, or any other person or persons, shall be entitled to any benefit in gross or by way of annuity from any such society, he, or (as the circumstances may require) every such

No member to receive more than 200*l*. or 30*l*. a year from any number of societies.

(*b*) Upon the construction of a clause in the 33 Geo. 3, c. 54, similar to this section, it was held that a bond conditioned for the production of a box containing the subscriptions of a Friendly Society, need not be stamped. *Carter* v. *Bond*, 4 Esp. 235. This section exempts from stamp duty any power, warrant, or letter of attorney for the transfer of any share in the *public funds only*; and although the 32nd section of the Act authorizes *other* investments than in the public funds, yet this exemption will not extend to such other investments.

Friendly Societies, by virtue of this section, are exempt from the duty on drafts or orders imposed by the 21 & 22 Vict. c. 20, an Act for granting a stamp duty on certain drafts or orders for the payment of money.

other person, shall, before he shall receive any such benefit from any of such societies, make and sign a declaration that the total value of all benefits accruing or which shall have accrued in respect of any one kind of assurance does not exceed the value of two hundred pounds, or, in the case of annuities, thirty pounds a year; and it shall be lawful for any society to require any member or any other person who shall be entitled to any such benefit, before he shall receive the same, to make and sign a declaration to the same effect, or that such member was not, when the benefit accrued, a member of any other association; and if any person knowingly make any false or fraudulent declaration in any such case he shall be guilty of a misdemeanor (*a*).

Trustees may subscribe to a hospital or provident institution.

XXXIX. The trustees of any Friendly Society may, out of the funds thereof, subscribe to any hospital, infirmary, charitable or other provident institution, such annual or other sum as may be agreed upon by the committee of management, or by a majority of the members at a meeting called for that purpose, in consideration of any member of such society, his wife, child, or other person nominated being eligible to receive the benefits of such hospital or other institution, according to the rules thereof.

As to determinations of disputes

XL. Every dispute between any member or members (*b*) of any society established under this Act

(*a*) This section does not apply to societies for assurance of cattle, 29 Vict. c. 34, s. 1.

(*b*) A treasurer of a society is not a member within the

or any of the Acts hereby repealed, or any person claiming through or under a member, or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society, and the decision so made shall be binding and conclusive on all parties, without appeal: *Provided, that where the rules of any society established under any of the Acts hereby repealed shall have directed disputes to be referred to justices, such disputes shall, from and after the first day of August, one thousand eight hundred and fifty-five, be referred to and decided by the county court as hereinafter mentioned* (*c*). according to the rules.

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meaning of this section. *Sinden* v. *Bankes*, 30 L. J. (Q. B.), 105. Upon a reference before arbitrators, they may decline to hear counsel. *In re Macqueen*, 9 C. B. (N. S.) 793.

(*c*) Section 6 of the 21 & 22 Vict. c. 101, extends this clause to disputes between the executors, administrators, nominee, or assigns of a member and the society.

The proviso in this section is repealed by sect. 5 of 21 & 22 Vict. c. 101, and the rules of a society may provide for the settlement of disputes by justices.

The direction of this section, as to the reference of disputes, has the effect, so far as regards such disputes, of excluding the jurisdiction of the superior courts; this was decided in the leading case of *Crisp* v. *Bunbury*, 8 Bing. 394, (Appendix), and in *Timms* v. *Williams*, 3 Q. B. Rep. 413, (Appendix.) The same point arose in the recent case of *Ex parte Payne*, 5 Dowl. & L. 679, (Appendix), where, by the rules of a Benefit Building Society it was provided, that all matters in dispute should be referred to justices, in pursuance of the 10 Geo. 4, c. 56, s. 27; and it was held, on motion for a *mandamus* to the judge of one of the county courts, to proceed and hear a plaint levied by one of the members against an officer of the society, that the section of the Act and the rules providing for a cheap, simple, and speedy decision, ousted the jurisdiction of the ordinary courts. In *Armitage* v. *Walker*, 2 Kay & Johnson, 211, upon the construction of the arbitration clause in the Benefit Building Societies Act, it was held that neither a

In what cases by the county court.

XLI. In all Friendly Societies established under this Act or any of the said repealed Acts, all applications for the removal of any trustee, or for any other relief, order, or direction, or for the settlement

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court of law or equity had jurisdiction to alter the award of arbitrators or justices, unless there was error upon the face of it, or it was shown to have been corruptly obtained. The Vice-Chancellor Wood on giving judgment said, "the legislature intended carefully to provide that these societies should not be dragged before courts of law or equity if it could possibly be avoided, and has taken care to enact that the whole discussion of their affairs shall be disposed of in a cheap and summary manner by the decision of an arbitrator or justice as the parties shall choose, and when they have once made their election, the power of the justice or of the arbitrator acting always within the rules of the society is complete, and is not subject to revision by any court of law or equity. That is the primary matter to which attention must be drawn, and it is necessary to be extremely careful that the jurisdiction of this court shall not be set up to crontol the arbitrators so selected, except upon a very clear and distinct case being made out of their abuse of their office. In *Trott* v. *Hughes*, Vice-Chancellor *Cranworth*, 17th December, 1850, MS., a bill was filed on behalf of some of the members of the "Second Borough of Southwark Benefit Building and Investment Association," against the directors and a portion of the shareholders who concurred in the acts complained of. The plaintiffs alleged that, being dissatisfied with the management, they had, in pursuance of the provisions of their deed of association, given a month's notice of their intention to withdraw from the society, and that the directors had denied their right so to withdraw. The plaintiffs thereupon filed their bill to recover their subscriptions, and by the present motion sought to restrain the directors from transferring or appropriating the funds of the society at the bankers. The defendants contended that the proper course for the plaintiffs, if dissatisfied with the conduct of the directors, was, according to the rules of the society, to appeal to arbitrators duly elected at a meeting for that purpose, and if that step did not produce a satisfactory result, they were then empowered to apply to two justices of the peace, whose decision would be final. The Vice-Chancellor said that the case was one in which the regulations of the society, and the provisions of the legislature with regard to such associations, permitted the members, in the event of a dispute arising, to bring the case before the directors for their

of disputes that may arise or may have arisen in any society the rules of which do not prescribe any other mode of settling such disputes, or to enforce *the decision of any arbitrators*, or to hear and determine any dispute, if no arbitrator shall have been

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decision; and if that should be unsatisfactory, to appeal to arbitrators, and ultimately to carry the case before two magistrates for their determination. The plaintiffs, however, had thought proper to apply to the court, to put a construction on their rules, instead of adopting those means of redress which were clearly pointed out by the rules themselves. He was of opinion that there was no necessity for the interference of the court, and refused the motion with costs. In *Reeves* v. *White*, 16 Justice of the Peace, 118; 17 Q. B. Rep. 995, (Appendix) the Queen's Bench held, that the summary remedy provided by the statute for the settlement of disputes by arbitration is conclusive, and ousts the jurisdiction of the superior courts. In *Grinham* v. *Card*, 7 Exch. Rep. 833, (Appendix) a dispute arose between two of the members of the committee of a Friendly Society and the trustees touching the distribution of a fund in the hands of the latter, and by one of the rules it was ordered that disputes were to be referred to such members of the committee as should not be personally interested in the matter; and it was held that the judge of the county court had no jurisdiction in such case according to the rule of the society, which provided for the reference to the committee, and then to private arbitration, of all disputes, and the question now raised was whether this particular dispute was one which could have been the subject of a suit in equity. The court restrained the judge of the county court from hearing the cause, on the ground that the dispute was one which ought to have been referred under the above rule. The words "every dispute," must be read as referring only to disputes between the society and the members as members, and not in any other capacity they may be placed in, by having the funds of the society advanced to them by way of mortgage, or on loan on the security of their policies. Such, at least, would seem to be the effect of the decision in the before-mentioned case of *Morrison* v. *Glover*, 19 Law J. Rep., Exch., 20, where the defendant, a member of a Benefit Building Society, having mortgaged some leasehold premises to the society, and thereby covenanted to observe the rules, and also to pay certain rents due to the superior landlord, was sued for breaches of

appointed, or if no decision shall be made by the said arbitrators within forty days after application has been made by the member or person claiming through or under a member or under the rules of the society, shall be made to the county court of the district within which the usual or principal place of business of the society shall be situate; and such court shall, upon the application of any person interested in the matter, entertain such application

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both these covenants; but contended by his plea, that the cause of action ought to have been refered to arbitration pursuant to the rules. The court in delivering judgment said:—"The only point that remained for our consideration was, whether this was a matter in dispute between the society and one of its members, according to the true meaning of the rules established by the society, so as to be the subject-matter of arbitration, or whether it might be made the subject of an action. It was contended on the part of the defendant, that whatever questions arose between the society and its members must be referred to arbitration. The way in which it became material was this: some of the grounds of the action were, undoubtedly between the society and the defendant in the character of a member, and there may be strong reasons for saying that if the claim had been entirely confined to a right on the part of the plaintiff of that description, then the case which was referred to of *Crisp* v. *Bunbury*, would apply, and the plea would be good; therefore the demurrer ought not to be allowed, and the defendant would be entitled to judgment. But it is clear that some of the breaches relied upon by the plaintiffs, for instance, a covenant to pay rent to Lord Cadogan, were matters not between the defendant as a member of the society, and the society; they were merely between the defendant and the society as a mortgagor. Now, we are of opinion, that if any other rule be established than that, the dispute must be with the party as member. If we go beyond that one step, the consequence would be, that any extraneous matter of any sort that might happen to arise between the society and any of its members, having no connection with the society, would become the subject-matter of reference. It appears to us, therefore, the words 'matter in dispute,' must be read, matter in difference between the society and the

and give such relief, and make such orders and directions in relation to the matter of such application, as hereinafter mentioned, or as may now be given or made by the Court of Chancery in respect either of its ordinary or its special or statutory jurisdiction; and the decision of such county court upon and in relation to such application as aforesaid shall not be subject to any appeal: Provided always, that in Scotland the sheriff within his county, and in Ireland the assistant barrister within his district, shall have the same jurisdiction as is hereby given to the judge of a county court (*a*).

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members as members, and not in any other capacity. That being our opinion on consideration, the plea which set up this necessity of the arbitration as a bar to the whole question raised by the plaintiffs, part of which clearly was not between the society and the defendant as a member, if the rest was, is a bad plea. The demurrer, therefore, to the plea must be allowed, and the plaintiffs will be entitled to judgment. We have abstained from expressing any opinion whether, if this had not been so, the particular case before the court was such as to fall within the doctrine in *Crisp* v. *Bunbury*,—it may or may not be; and it is clear that on the present record the plaintiffs are entitled to judgment." See also upon this point the case of *Fleming* v. *Self*, 1 Kay, 518. Where the trustees had expelled a member, it was held upon an application for a *mandamus* to reinstate him, that the question was one for the county court, under this section. *Woolrich, Ex parte*, 31 *L. J.* (Q. B) 122, (see Appendix,) and see *Sandes* v. *Banks*, 7 Jur. 913. See also note to sect. 5 of 21 & 22 Vict. c 101.

(*a*) By sect. 1 of 21 & 22 Vict. c. 101, the judge of the Sheriff's Court in London, and in Ireland the assistant barrister within his district, and in Dublin and Cork, the recorder, have respectively the same jurisdiction as by this section is given to the judge of the county court. In *Skipton Friendly Society* v. *Prince*, 11 Jur. 12, the Queen's Bench refused a prohibition to restrain the county court from hearing the cause, as the question of jurisdiction was for the

Order of county court, how enforced.

XLII. In all cases where the order of such county court shall be for the payment of money, the same may be enforced in the same manner as the

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judge, and the application therefore premature. In the recent case of *R.* v. *Grant*, 14 Q. B. Rep. 43, and reported in 13 Jur. 1027, and 19 L. J. Rep., N. S., 62, (Appendix,) where by the rules of a Friendly Society it was declared, that all matters in dispute should be referred to arbitrators, who were to hear evidence on both sides; it was held that as the arbitrators had refused to hear evidence on the part of the member, the award made by them was not made according to the true meaning of the rules, and therefore not final and binding, and that the jurisdiction given to justices in case of no award being made intended an award final and binding; and that, therefore, the justices had power to make an order upon the matter in dispute; but where the arbitrators have come to a wrong conclusion, the county court will have no jurisdiction, as will be seen by the case *Ex parte Long*, 2 Weekly Rep. 18. (Appendix.)

It would appear from the case of *R.* v. *Evans*, 18 Justice of the Peace, 247, (Appendix,) that if the arbitrators appointed in accordance with the rules are superseded by mistake, and new ones *bonâ fide* appointed, in the belief that the former arbitrators are dead, or have refused to act, an award made by the newly-appointed arbitrators will be good, and the county court will have no jurisdiction. In that case it appeared that a member having been expelled, referred the dispute to the arbitration of five out of the nine persons, who, after his expulsion, had been appointed arbitrators in the room of nine others appointed at the first meeting of the society, but who, it was alleged, had declined to act or had left the place; and it was held that the award of the five was binding, and that justices had no jurisdiction.

The jurisdiction of the county court must, it would seem, be confined strictly to the subject-matter of complaint, as was held in *Rex* v. *Soper*, 3 Barn. & Cr. 857, (Appendix,) where it appeared that on the complaint of an expelled member of a Friendly Society of having been deprived of relief to which he was entitled, the justices awarded not only that the steward should give him such relief, *but also that he should be continued a member of the society;* and it was held that the latter part of the order was illegal, inasmuch as the expulsion of the party was no part of the complaint. It was decided in *Rex* v. *Wade*, 1 Barn. & Ad. 861, that an indict-

ordinary judgments of such court are enforced; but where the order of the said court shall be for the doing of some act, not being for the payment of

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ment lay against the president and stewards of a Friendly Society for disobeying an order of justices addressed to them, to re-admit a member, though it was sworn that the power of doing so was not in them, but in a committee; and in *Rex* v. *Gash*, 1 Stark. 441, where upon a complaint made by an excluded member, the then stewards were summoned, and an order was made that they and other members of the society should reinstate the complainant; the order was served on the stewards after they had ceased to be so, but it was held that it was still obligatory upon them as members to attempt to reinstate the complainant, and that their having ceased to be stewards was no justification of entire neglect on their part. On an indictment against the officers of a Friendly Society for not re-admitting a member on the order of justices, it was held to be no defence that the party was not eligible to be a member by the rules, as that was matter of defence before justices. *Rex* v. *Gilkes*, 7 Car. & P. 52.

The application to the court is to be made by any person interested in the matter, and upon this part of the section it has been held that the trustees of a society, not being members, who *ex mero motu* had applied to restrain the committee of management of the society from obtaining the certificate of the Registrar to certain alterations in the rules, passed at a meeting which the trustees alleged had been improperly convened, were not "persons interested" within the meaning of this section, and that therefore the county court had no jurisdiction. *Hull* v. *Macfarlane*, 2 C. B. 796; 21 L. J., N. S. (C. P.), 41; 3 Jur., N. S., 12, 62. If the matter in dispute affected the funds of the society, and the trustees acted under its direction, then it would seem from the judgment in the above case that the trustees would be parties interested.

This section has been held to give to the county court all the jurisdiction of the Court of Chancery, and to enable such court to restrain the committee of management from obtaining the certificate of the Registrar to certain regulations. *Hoey* v. *Macfarlane*, 4 Jur., N. S., 785; 5 C. B. Rep., N. S. 718. Where the trustees had expelled a member, it was held, on an application for a *mandamus* to the trustees to reinstate him, that it was a question for the county court under this section, *Woolrich, ex parte*, 31 L. J. (Q. B.) 122. (See Appendix.)

money, it shall be lawful for the judge of such county court in his said order to order the party to do such act, or that in default of his doing it he shall pay a certain sum of money; and in case he refuse or neglect to do the act required, upon demand in that behalf, the sum of money or penalty, in the said order may then be recovered in the same manner as a judgment for debt or damages in such court; and it shall not be lawful to remove the same by certiorari or other writ or process to any superior court of record (*a*).

Lord Chancellor may make orders for regulating the proceedings in this respect.

XLIII. Provided, however, that the Lord Chancellor may make such orders for regulating the proceedings by and before the judges of county courts under this Act as he may think fit; and in Scotland the court of session shall have the like power by act of sederunt as regards proceedings before sheriffs under this Act; and subject to such orders and acts of sederunt respectively, such judges and sheriffs may regulate the proceedings before them respectively, so as to render them as summary and inexpensive as conveniently may be (*b*).

In the case of societies whose rules are not certified, disputes between the

XLIV. In the case of any Friendly Society established for any of the purposes mentioned in section IX. of this Act, or for any purpose which is not illegal, having written or printed rules, whose rules

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(*a*) The orders of the county court may be enforced by imprisonment. *Hoey* v. *Macfarlane*, 4 C. B. Rep. 734; or by attachment. See *Caraker* v. *Treacy*, in the Liverpool County Court, set out in the Appendix.

(*b*) For these orders see Appendix.

have not been certified by the Registrar, provided a copy of such rules shall have been deposited with the Registrar, every dispute between any member or members of such society, and the trustees, treasurer, or other officer, or the committee of such society, shall be decided in manner hereinbefore provided with respect to disputes, and the decision thereof, in the case of societies to be established under this Act, and the sections in this Act provided for such decision, and also the section in this Act which enacts a punishment in case of fraud or imposition by an officer, member, or person, shall be applicable to such uncertified societies: Provided always, that nothing herein contained shall be construed to confer on any such society whose rules shall not have been certified by the Registrar, or any of the members or officers of such society, any of the powers, exemptions, or facilities of this Act, save and except as in and by this section is expressly provided (*c*).

Society and its own members to be settled as in cases of certified societies.

XLV. The trustees of Friendly Societies established under this Act or under any of the repealed Acts, or the officer thereof appointed to prepare returns, shall, once in every year, in the months of January, February, or March, transmit to the Registrar a general statement of the funds and

Returns to the Registrar, when and how to be made.

(*c*) By sect. 6 of 21 & 22 Vict. c. 101, the provisions of this section are extended to disputes between the executors, administrators, nominee, or assigns of a member, and the society. This section does not apply to disputes which may have arisen before the rules are deposited. *Smith* v. *Pryor*, 3 Jur., N. S., 887, (Appendix), nor, it would seem, by analogy, to frauds committed before that time.

effects of such society during the past twelve months, or a copy of the last annual report of such society, and shall also, within three months after the expiration of the month of December, one thousand eight hundred and fifty-five, and so again within three months after the expiration of every five years succeeding, transmit to the said Registrar a return of the rate or amount of sickness and mortality experienced by such society within the preceding five years, in such form as shall be prepared by the said Registrar, and an abstract of the same shall be laid before parliament; and the Registrar shall also lay before parliament every year a report of his proceedings, in his office of Registrar, and of the principal matters transacted by Friendly Societies which have come under his cognizance during the past year (*a*).

Certain societies established for granting annual payments to nominees before the year 1850 to have privileges of this Act.

XLVI. And whereas under the provisions of the Acts hereby repealed, or some of them, certain associations or societies have been formed in England and Ireland for the provident and charitable purpose of securing annual payments to the nominees of the members thereof, contingent upon the death of such members, and have invested their funds in the manner provided by such Acts, and doubts may arise whether such associations or societies will be entitled to the exemptions and privileges by this Act conferred in the event of such annual payments, amounting in the aggregate to more than thirty

(*a*) See 23 & 24 Vict. c. 58, s. 7, for the penalties for not making these returns.

pounds; and it is expedient to remove such doubts, and to give protection to such associations or societies, and to the funds thereof: Be it therefore enacted, that notwithstanding anything in this Act contained to the contrary, all such associations or societies as were founded and subsisting under the provisions of the said Acts previously to the fifteenth day of August, one thousand eight hundred and fifty, shall enjoy the exemptions and privileges by this Act conferred on societies to be established under the provisions of this Act as fully as if they had been registered and certified under this Act, and notwithstanding that the contingent annual payments to which the nominees of the present or future members of such associations or societies may become entitled shall exceed in the aggregate the sum of thirty pounds.

Extra contribution may be demanded of a member serving in the militia.

XLVII. (*b*) In any case where the rules of any society already enrolled or certified have provided that a member shall be deprived of any benefit by reason of his enrolment or service in the militia, it shall be lawful for the trustees of such society to require of any member a contribution exceeding the rate of contribution hitherto payable by such member, to an amount not exceeding one-tenth of such rate, during the time such member shall be serving out of the United Kingdom, or to suspend all claim of such member to any benefits of such society, and all claim of the society to any contributions payable by such member, during the time he may

(*b*) See 17 & 18 Vict. c. 105; 22 & 23 Vict. c. 40, and 23 Vict. c. 13, *infra*.

be serving in the militia out of the United Kingdom, provided that such suspension shall cease so soon as the said member shall return to the United Kingdom, and he shall thereupon be replaced on the same footing as before he went abroad with the regiment to which he belongs.

Act to apply to societies constituted under the Industrial and Provident Societies Act, 1852.

XLVIII. All the provisions of this Act shall apply to all societies constituted under the Industrial and Provident Societies Act, 1852, in the same manner as the laws in force relating to Friendly Societies at the date of the passing of the said Industrial and Provident Societies Act, 1852, are by the said last-mentioned Act directed to apply to societies constituted thereunder; and the limitation hereinbefore contained of the amount of annuities and sums payable on the death of any person, or on any other contingency, in the case of societies established under this Act, shall apply to all societies constituted under the said Industrial and Provident Societies Act, 1852 (*a*).

Interpretation of society.

XLIX. That the word "society" shall extend to and include every branch of a society, by whatever name it may be designated.

Extension of Act.

L. This Act shall extend to Great Britain and Ireland, the Channel Isles, and the Isle of Man.

Commencement of Act.

LI. This Act shall commence and take effect from the first day of August, one thousand eight hundred and fifty-five.

(*a*) These Acts are repealed by 25 & 26 Vict. c. 87, s. 1, and see ss. 9 & 15.

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

FIRST SCHEDULE.

Reference to, and Title of Act.	Extent of Repeal.
33 Geo. 3, c. 54.—An Act for the encouragement and relief of Friendly Societies.	The whole Act
35 Geo. 3, c. 111.—An Act for more effectually carrying into execution an Act made in the thirty-third year of the reign of his present Majesty, intituled "An Act for the Encouragement and Relief of Friendly Societies," and for extending so much of the powers thereof as relates to the framing rules and regulations for the better management of the funds of such society and the appointment of treasurers to other institutions of a charitable nature.	The whole Act.
36 Geo. 3, c. 68 (Irish).—An Act for the encouragement and relief of Friendly Societies.	The whole Act.
43 Geo. 3, c. 111.—An Act for enabling Friendly Societies intended to be established under an Act passed in the thirty-third year of the reign of his present Majesty to rectify mistakes made in the registry of their rules.	The whole Act.
49 Geo. 3, c. 58.—An Act to explain and render more effectual an Act passed in the parliament of Ireland, in the thirty-sixth year of his present Majesty's reign, for the encouragement and relief of Friendly Societies.	The whole Act.
49 Geo. 3, c. 125.—An Act to amend an Act made in the thirty-third year of his present Majesty for the encouragement and relief of Friendly Societies.	The whole Act.
59 Geo. 3, c. 128.—An Act for further protection and encouragement of Friendly Societies, and for preventing frauds and abuses therein.	The whole Act.

References to, and Title of Act.	Extent of Repeal.
6 Geo. 4, c. 74.—An Act for consolidating and amending the laws relating to conveyances and transfers of estates and funds vested in trustees who are infants, idiots, lunatics, or trustees of unsound mind, or who cannot be compelled or refuse to act; and also the laws relating to stocks and securities belonging to infants, idiots, lunatics, and persons of unsound mind.	So much of Section 11 as relates to Friendly Societies.
10 Geo. 4, c. 56.—An Act to consolidate and amend the laws relating to Friendly Societies.	The whole Act.
2 Will. 4, c. 37.—An Act to amend an Act of the tenth year of his late Majesty King George the Fourth, by extending the time within which pre-existing societies must conform to the provisions of that Act.	The whole Act.
4 & 5 Will. 4, c. 40.—An Act to amend an Act of the tenth year of his late Majesty King George the Fourth, to consolidate and amend the laws relating to Friendly Societies.	The whole Act.
3 & 4 Vict. c. 73.—An Act to explain and amend the Acts relating to Friendly Societies.	The whole Act.
9 & 10 Vict. c. 27.—An Act to amend the laws relating to Friendly Societies.	The whole Act.
13 & 14 Vict. c. 115.—An Act to consolidate and amend the laws relating to Friendly Societies.	The whole Act.
15 & 16 Vict. c. 65.—An Act to continue and amend an Act passed in the fourteenth year of the reign of Her present Majesty, to consolidate and amend the laws relating to Friendly Societies.	The whole Act.
16 & 17 Vict. c. 123.—An Act to amend the laws relating to the investments of Friendly Societies.	The whole Act.
17 & 18 Vict. c. 50.—An Act to continue an Act of the twelfth year of Her present Majesty, for amending the laws relating to savings banks in Ireland, and to authorize Friendly Societies to invest the whole of their funds in savings banks.	Section 2.
17 & 18 Vict. c. 101.—An Act to continue and amend the Acts now in force relating to Friendly Societies.	The whole Act.

SECOND SCHEDULE.

FORM OF REGISTRAR'S CERTIFICATE TO RULES OF FRIENDLY SOCIETIES.

I hereby certify that the foregoing rules [or the alterations or amendments of the rules] of the —— society at ——, in the county of ——, are in conformity with law, [and in the case of a new society] and that the society is duly established from the present date, and is subject to the provisions and entitled to the privileges of the Acts relating to Friendly Societies.

The rates of contributions and payments are stated to have been prepared by A.B., actuary of ——, or [as the case may be] are not stated to have been prepared by any actuary.

THIRD SCHEDULE.

FORM OF BOND.

Know all men by these presents, that we, A. B., of ——, treasurer, &c., [as the case may be] of the —— society, established at —— in the county of ——, and C.D. of ——, (as surety on behalf of the said A.B.), are jointly and severally held and firmly bound to A.B. of ——, C.D. of ——, and E.F. of ——, the trustees of the said society, in the sum of ——, to be paid to the said A.B., C.D., and E.F.

as such trustees, or their successors, trustees for the time being, or their certain attorney, for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated the ——day of ——, in the year of our Lord ——.

Whereas the above bounden A.B. hath been duly appointed treasurer, &c. [as the case may be] of the —— society, established as aforesaid, and he, together with the above-bounden C.D. as his surety, have entered into the above-written bond subject to the condition hereinafter contained: Now, therefore the condition of the above-written bond is such, that if the said A.B. shall and do justly and faithfully execute his office of treasurer, &c. [as the case may be] of the said society established as aforesaid, and shall and do render a just and true account of all monies received and paid by him, and shall and do pay over all the monies remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers, and property of or belonging to the said society in his hands or custody, to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments, and likewise shall and do in all respects well and truly and faithfully perform and fulfil his office of treasurer, &c. [as the case may be] to the said society according to the rules thereof, then the above-written bond shall be void and of no effect; otherwise shall be and remain in full force and virtue.

21 & 22 Vict. Cap. 101.

An Act to Amend the Act of the Eighteenth and Nineteenth Years of Her present Majesty, chapter Sixty-three, relating to Friendly Societies.

[2nd August, 1858.]

WHEREAS it is expedient to amend an Act passed in the session holden in the eighteenth and nineteenth years of Her Majesty, chapter sixty-three, intituled *An Act to consolidate and amend the Law relating to Friendly Societies*, and to provide additional facilities for carrying the same into effect: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same: 18 & 19 Vict. c. 63.

I. In the city of London the judge of the Sheriff's Court, and in Ireland the assistant barrister within his district, and in the cities of Dublin and Cork the recorder thereof, shall respectively have the same jurisdiction as by the said Act, as amended by this Act, is given to the judge of a county court in any matter arising under the said Act, and in Ireland a justice of the peace or two justices of the peace, as the case may be, shall have the same jurisdiction as by section twenty-four of the said Act is given to a justice of the peace or two justices of the peace in England in any matter arising under the said section, but the complaint shall be heard Jurisdiction of county court given to judge of sheriff's court, assistant barrister, &c. and section 24, extended to Ireland.

and determined in manner directed by the Act passed in the fourteenth and fifteenth years of Her Majesty, chapter ninety-three.

No money to be paid on the death of a child without a certificate signed by a medical practitioner.

II. The tenth section of the said Act shall be repealed, and instead thereof be it enacted:

In any society in which a sum of money may be insured, payable on the death of a child under the age of ten years, for the funeral expenses of such child, it shall not be lawful to pay any sum so insured unless the person who shall apply for such payment shall produce a certificate, signed by a qualified medical practitioner (*a*), stating the probable cause of death of such child; and if any trustee or officer of such society, upon an insurance of a sum payable on the death of any child under the age of ten years, shall knowingly pay a sum which shall raise the whole amount receivable from one or more than one society for the funeral expenses of a child under the age of five years to a sum exceeding six pounds, or of a child between the ages of five and ten years to a sum exceeding ten pounds, or shall pay any sum without indorsing the amount thereof on the back or at the foot of the medical certificate aforesaid, or if any parent or other person, who shall apply for such payment to more than one society, shall produce to the trustees or officers of one society, any other or different certificate than that which he shall have produced to the trustees or officers of any other society, such trustee, officer, parent, or other per-

(*a*) See 21 & 22 Vict. c. 90, s. 26, *infra*, p. 80.

son shall be liable to a penalty not exceeding five pounds for every such act upon conviction before two justices of the county or borough in which such child shall have died: Provided, that if the said child shall have been attended immediately before its death by the medical officer of any union on account of such union, he shall deliver to the parents and friends of the deceased child upon their application, a certificate stating the probable cause of death of such child, and shall not be entitled to receive any fee for the same; and if such child shall not have been attended by such medical officer as aforesaid, nor by any qualified medical practitioner, the medical officer of the union or parish in which such child shall have been resident shall deliver to the parents or friends of the deceased child, upon their application, a certificate stating the probable cause of death of such child, and shall be entitled to receive from the parties applying for the same a fee of one shilling.

Extension of recited Act as to punishment of fraud, &c.

III. Sections sixteen and twenty-four of the said Act shall extend and be applicable to all institutions and societies entitled to the benefit of section eleven of the said Act.

Power to society to change its name.

IV. Any Friendly Society may, with the approval in writing of the Registrar, change its name; but no such change shall affect any rights or obligations of the society or any member thereof, and any legal proceedings may be continued or commenced by or against the trustees of the society, or any officer or the committee thereof, by and notwithstanding its new name.

Disputes to be settled by justices, if rules so direct.

V. The proviso contained in section forty of the said Act shall be repealed, and in lieu thereof be it enacted, that where the rules of any society established under the said Act, or any of the Acts thereby repealed, shall direct disputes to be referred to justices, then any justice of the peace acting in the county or borough in which the place of business of such society shall be situated, upon complaint made by any member, his executors, administrators, nominee, or assigns, or by any person claiming under the rules of the society, of any matter in dispute between him or them and the society, to summon the person against whom such complaint is made to appear at a time and place to be named in such summons, and any two justices (*a*) present at the time and place mentioned in such summons shall proceed to hear and determine the said complaint, which complaint shall be heard and determined in England in manner directed by the Act passed in the eleventh and twelfth years of Her Majesty, chapter forty-three, and in Ireland in manner directed by the Act passed in the fourteenth and fifteenth of Her Majesty, chapter ninety-three; and such justices may make such order thereupon either for the payment of money or otherwise, together with costs, not exceeding ten shillings, as they shall think fit (*b*); and where the order made shall be for the doing of some act other than the

Justices may make order.

(*a*) See note to sect. 24 of 18 & 19 Vict. c. 63, *supra*, p. 27, as to the time within which the complaint must be made and the jurisdiction of the lord mayor, aldermen, police, and stipendiary magistrates.

(*b*) Under 20 & 21 Vict. c. 43, s. 2, justices must grant a case if required. *R.* v. *Lambarde*, 1 Law Rep. (Q. B.) 389.

payment of money, the said justices may order the payment of a sum of money in default of the doing of such act; and any monies which shall be paid by any officer of the society so levied on his property under any order or warrant (*of*) the justices shall be repaid, with all damages accruing to him, by the society (*c*): Provided always, that in Scotland the sheriff within his county shall have the same jurisdiction as is hereby given to a justice or justices of the peace (*d*).

Sheriff in Scotland to have same jurisdiction as justices.

VI. Sections forty and forty-four of the said Act shall extend and be applicable to disputes between the executors, administrators, nominee, or assigns of a member, and the trustees, treasurer, or other officer, or the committee of a society.

Sects. 40 and 44 of said Act extended to other disputes.

VII. In any proceeding under the said recited Act or this Act against a society it shall be sufficient to make the secretary or other officer of the society, at the time of the plaint or complaint being entered or made, the defendant in such proceeding, by his name and the title of the office he holds in the society; and the proceedings on such plaint or complaint shall be commenced and carried on

An officer to be proceeded against on behalf of a society.

(*c*) If no distress be found then under 11 & 12 Vict. c. 43, the party may be imprisoned.

(*d*) The treasurer of a society resigned his office in April, 1856, and in June paid over certain monies to the society, but not all the monies demanded of him, which he denied to be due, and was therefore expelled the society under one of its rules. In November, 1859, an order was made by two justices reinstating him. *Held*, that this was not a dispute between the society and a member within the statute. *Sinden* v. *Bankes*, 7 Jur. 913. See note to sect. 41 of 18 & 19 Vict. c. 63.

against such officer on behalf of the society, and shall not be abated or prejudiced by the death, resignation, or removal, or by any act of such officer after the commencement thereof; and the summons to be issued to such officer may be served by leaving the same at the usual place of business of the society (*a*).

VIII. [Repealed by 23 & 24 Vict. c. 58, s. 6.]

Acts to be considered as one Act.

IX. This Act and the said recited Act shall be construed as one Act, and may be cited together for all purposes as the "Friendly Societies Acts, 1855 and 1858."

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23 & 24 Vict. Cap. 58.

An Act to amend the Act of the Eighteenth and Nineteenth Years of Her Majesty relating to Friendly Societies. [6th August, 1860.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

In case of dissolution of society under Sect. 18 of 18 & 19 Vict.

I. In case of the dissolution of a society, according to the provisions of the thirteenth section of the Act passed in the eighteenth and nineteenth

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(*a*) This section does not repeal the 19th section of the 18 & 19 Vict. c. 63, but allows the secretary to be made a defendant as well as the trustees.

years of Her Majesty, chapter sixty-three, it shall not be necessary to state in the agreement the intended appropriation or division of the funds or other property, but it shall be lawful to the members, if they shall think fit, to refer such appropriation or division to the award of the Registrar; and in case application shall be made in writing by the members of a society, not being less in number than five-eighths of the whole body thereof, setting forth that the funds of such society are insufficient to meet the claims thereon, with the grounds upon which such insufficiency can be proved, it shall be lawful for the Registrar to investigate the same, and if upon such investigation he shall find that the said society is in an insolvent condition, and that it would conduce to the interests of all parties concerned that the affairs of the society should be wound up and brought to a termination, he shall make an award to that effect, and shall direct in what manner the funds and property of the society shall be divided or appropriated, and it shall not be necessary in such case that the provisions of the said thirteenth section be complied with; provided that previous to such investigation the Registrar shall give not less than twenty-one days' notice in writing, to be sent by post to the trustees, secretary, or other officer of such society, at the place where such society holds its meetings.

c. 63 not necessary to state in agreement intended division of funds, but may refer the same to the award of the Registrar.

II. Every award so made as aforesaid by the Registrar shall be final and conclusive on all members and other persons having any claim on the funds of the said society, without appeal, and shall be enforced in the same manner as by section

Registrar's award to be conclusive without appeal.

forty-one of the said Act is provided for enforcing the award of arbitrators; and the expenses of such award, and of publishing the notice of dissolution in the Gazette, shall be paid out of the funds of the society before any appropriation thereof shall be made.

Evidence of dissolution.

III. When any agreement for the dissolution of a society authorized by section thirteen of the said Act shall be transmitted to the Registrar, and when any award authorized to be made by this Act shall be made by the Registrar, notice thereof shall, within twenty-one days after the same shall have been so transmitted or made respectively, be advertised by the Registrar, as respects societies in England in the London Gazette, as respects societies in Scotland in the Edinburgh Gazette, and as respects societies in Ireland in the Dublin Gazette; and unless within three calendar months from the date of the Gazette in which such advertisement shall appear, a member or other person interested in or having any claim on the funds of the society shall commence proceedings to set aside the dissolution of the society consequent upon such agreement or award, the society shall be considered for all intents and purposes, and in all courts of law and equity, as legally dissolved, and the requisite consents to such agreement, or, as the case may be, to the application to the Registrar, to have been duly obtained, without proof of the signatures thereto.

Registrar's annual report to contain particulars of awards.

IV. The Registrar in his next annual report submitted to parliament shall set forth the particulars of every award made under the provisions of this

Act, which he may have made during the preceding twelve months.

Provisions as to societies dissolved before passing of this Act.

V. In regard to societies which have been dissolved before the passing of this Act, if notice of any agreement for the dissolution of such society, already transmitted to the Registrar, or of any award made under section thirteen of the said Act, shall within three months after the passing of this Act be advertized in such Gazette as aforesaid, the provisions of section three of this Act shall apply in the same way as if such agreement and award had been transmitted and made subsequent to the passing of this Act.

Sect. 8 of 21 & 22 Vict. c. 101, repealed.

VI. The eighth section of the Act passed in the twenty-first and twenty-second years of Her Majesty, chapter one hundred and one, is hereby repealed; but where, previously to the passing of this Act any application has been made to the Registrar respecting the dissolution of a society under the said section, such society shall be dissolved in the same manner and with the same incidents as if this Act were not passed, and for the purposes of such dissolution the said section shall be deemed to remain in full force.

Penalty for not making annual return in compliance with sect. 45 of 18 & 19 Vict. c. 63.

VII. If default shall be made in transmitting to the Registrar before the first day of June in each year the general statement or copy of the last annual report of any society, in compliance with the provisions of section forty-five of the Act of the session of the eighteenth and nineteenth of Victoria, chapter sixty-three, the officer making such default shall be liable to a penalty not exceed-

ing twenty shillings, to be recovered, with costs, at the suit of the Registrar, before two or more justices (*a*), as to England in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within* England *and* Wales *with respect to summary convictions and orders*, and as to Scotland before two or more justices or the sheriff of the county, in manner directed by the Act passed in the session of parliament holden in the seventeenth and eighteenth years of the reign of Her Majesty Queen Victoria, chapter one hundred and four, intituled *An Act to amend or consolidate the Acts relating to Merchant Shipping*, as regards offences in Scotland against that Act, not being offences by that Act described as felonies or misdemeanors, and as to Ireland in manner directed by the Act passed in the session holden in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, intituled *An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions, in* Ireland, or any Act passed for the amendment of the above-mentioned Acts; and the justices or sheriff imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings; and subject to such direction all

(*a*) Officer making default may also be imprisoned under 11 & 12 Vict. c. 43.

penalties shall be paid into the receipt of Her Majesty's exchequer, in such manner as the treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom of Great Britain and Ireland.

If accounts not made to commissioners pursuant to sect. 34 of 18 & 19 Vict. c. 63, interest thereon to cease until accounts made.

VIII. If the accounts and returns required from certain Friendly Societies by the Commissioners for the reduction of the National Debt, pursuant to section thirty-four of the said Act, be not made within thirty days after the same have been required, the account of the said society shall be closed by the said Commissioners, and thenceforth no interest shall be credited to such society thereon, until such accounts and returns shall be furnished to the said Commissioners, or the money be withdrawn.

Application on behalf of society may be made by Registrar.

IX. Any application authorized by section twenty-four of the said recited Act to be made by any person on behalf of a society, may be made by the Registrar.

This and Friendly Societies Acts to be construed as one.

X. This Act and the Friendly Societies Acts, 1855 and 1858, shall be construed as one Act, and may be cited together for all purposes as the Friendly Societies Acts.

29 Vict. Cap. 34.

An Act to give further Facilities for the Establishment of Societies for the Assurance of Cattle and other Animals. [11th June, 1866.]

Whereas it is expedient to give further facilities for the establishment of societies for the assurance of cattle and other animals under the Friendly Societies Acts: Be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same.

Societies may be established for assurance to any amount.

I. Notwithstanding anything in the Act passed in the session holden in the eighteenth and nineteenth years of Her Majesty, chapter sixty-three, intituled *An Act to consolidate and amend the Law relating to Friendly Societies*, a society may be established under the provisions of the said Act, for the assurance to any amount against loss by death, of neat cattle, sheep, lambs, swine, and horses, from disease or otherwise; and neither the provisions in section nine of the said Act that no member shall subscribe or contract for a sum payable on death or any other contingency exceeding two hundred pounds, nor section thirty-eight of the said Act shall apply to any such society so established, or which may hereafter be so established for such purpose.

II. All contributions, premiums, and other payments payable by any member of any such society under the rules thereof in respect of any assurance effected by him, shall be considered as a debt due by him to the society, and shall be recoverable as such in the county court of the district within which the usual or principal place of business of the society is situate, in Scotland in the Sheriff's Court of the county, and in Ireland before the assistant barrister within his district. Contributions to be recoverable as a debt.

III. This Act may be cited for all purposes as the Cattle Assurance Act, 1866. Title of Act.

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16 & 17 Vict. Cap. 34.

An Act for granting to Her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices. [28th June, 1853.]

Sect. XLIX. Any Friendly Society legally established under any Act of parliament relating to Friendly Societies, and which does not assure or grant to any individual any sum or annuity to an amount which would debar such society from the benefit of the exemption granted to Friendly Societies by the said Act of the fifth and sixth years of Her Majesty, chapter thirty-five, in respect of their stocks, dividends, and interest chargeable under schedule (C.) of the said Act, shall be entitled to exemption under this Act, as well in respect of Friendly Societies legally established, entitled to exemption under both schedule (C.) and schedule (D.)

all their interest and other profits and gains chargeable under schedule (D.), as in respect of their stocks, dividends, and interest chargeable under schedule (C.) of this Act (*a*).

N.B. The 88th section of the 5 & 6 Vict. c. 35, is as follow:—"Exemption." The stock, dividends, or interest of any Friendly Society legally established under any Act of parliament relating to Friendly Societies: provided it shall appear by the rules of any such society deposited at or to be deposited with the Commissioners for the reduction of the National Debt, or with the trustees of any savings bank, that the sums assured by any such society to any individul, or to any person nominated by or to claim under him, shall not exceed the sum of two hundred pounds, or the amount of any annuity or annuities granted or to be granted by any such society to any individual, or to any person nominated by or to claim under him, shall not exceed the sum of thirty pounds per annum: provided also, that when any property belonging to any such society shall be invested in the public securities in the Bank of England, the said last-mentioned property shall be duly claimed and proved by any trustee or treasurer of any such society, or by any member thereof, before the said Commissioners for special purposes.

(*a*) This section has been continued by the different Acts relating to the Property Tax.

17 & 18 Vict. Cap. 105.

An Act to amend the Law relating to the Militia in England and Wales. [11th Aug. 1854.]

Enrolment in militia not to cause forfeiture of any interest in any benefit society.

Sect. XLIV. No man by reason of his enrolment or service in the militia, or in the naval coast volunteers, shall lose or forfeit or be deemed to have lost or forfeited any interest he may possess or may have possessed at the time of his so being enrolled or serving in any friendly or benefit society, any laws, rules or regulations of such society to the contrary notwithstanding; and in case any dispute shall arise between any such society and any such man by reason of such enrolment or service, it shall be considered as being a dispute directed by the rules of such society to be decided by justices of the peace, pursuant to the provisions of the Acts in force relating to Friendly Societies (*b*).

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18 & 19 Vict. Cap. 35.

An Act to continue the Act for extending for a limited Time the Provision for Abatement of Income Tax in respect of Insurance on Lives. [26th June, 1855.]

Whereas by an Act passed in the session of parliament holden in the sixteenth and seventeenth

(*b*) By sect. 47 of 18 & 19 Vict. c. 63, an extra contribution may be demanded of the member or his benefits may be

years of the reign of Her present Majesty, intituled *An Act to extend for a limited Time the Provision for Abatement of Income Tax in respect of Insurance on Lives*, which Act was limited to continue in force until the fifth day of July, one thousand eight hundred and fifty-four: And whereas by an Act passed in the last session of parliament the said first-mentioned Act was continued until the fifth day of July, one thousand eight hundred and fifty five: And whereas it is expedient to extend the benefit of the recited provisions to persons insuring or contracting with such Friendly Societies as hereinafter-mentioned, and to continue the said first recited Act for such period as hereinafter mentioned: Be it therefore, &c.

Persons having made insurance with Friendly Societies to be entitled to benefits of recited Acts.

I. Any person or persons who shall have made any such insurance or contracted for any such deferred annuity as in the said recited Acts mentioned in or with any Friendly Society legally established under any Act of parliament relating to Friendly Societies, shall be entitled to all the benefits and advantages conferred by the said recited Acts; provided that the premiums payable in respect of such insurances shall not be made for shorter periods than three months (*a*).

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suspended while serving in the militia out of the United Kingdom.

(*a*) This Act is by 29 & 30 Vict. c. 36, extended until the 6th April, 1867.

N.B. The provision in the 16 & 17 Vict. c. 34, for abatement of Income Tax in respect of Life Insurance, is as follows :—

Persons who have made insurance or contracted for a deferred annuity on the lives of themselves or wives to be allowed an abatement of duty in respect of the annual premiums made.

Sect. LIV. Any person who shall have made insurance on his life or on the life of his wife, or shall have contracted for any deferred annuity on his own life or on the life of his wife, in or with any insurance company which shall become registered under any Act to be passed in the present session of parliament for that purpose, and which shall comply with the requirements of such Act, and any person who shall under any Act of parliament be liable to the payment of an annual sum, or to have an annual sum deducted from his salary or stipend in order to secure a deferred annuity to his widow or a provision to his children after his death, shall be entitled to deduct the amount of the annual premium paid by him for such insurance or contract, or the annual sum paid by him or deducted from his salary or stipend as aforesaid, from any profits or gains in respect of which he shall be liable to be assessed under either of the schedules (D.) or (E.) of this Act, or to have any assessment which may be made upon him under either of the said schedules reduced or abated by the deduction of the amount of the said annual premium from the amount of the profits or gains on which such assessment has been made; or if such person shall be assessed to duties under any of the schedules contained in this Act, and shall have paid such assessment, or shall have paid or been charged with any of the said duties by deduction or otherwise, such person, on claim made

to the Commissioners for special purposes, and on production to them of the receipt of such annual payment, and on proof of the facts to the satisfaction of the said Commissioners, shall be entitled to have repaid to him such proportion of the said duties paid by such person as the amount of the said annual premium bears to the whole amount of his profits and gains on which he shall be chargeable under all or any of the schedules of this Act: Provided always, that no such abatement, allowance, or repayment as aforesaid, shall be made in respect of any such annual premium beyond one-sixth part of the whole amount of the profits and gains of such person so chargeable as aforesaid, nor shall any such deduction or abatement entitle any such person to claim total exemption or any relief from duty on the ground of his profits and gains being thereby reduced below one hundred or one hundred and fifty pounds, as the case may be.

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21 & 22 Vict. Cap. 90.

An Act to regulate the Qualifications of Practitioners in Medicine and Surgery.

[2nd August, 1858.]

Unregistered persons not to hold certain appointments.

Sect. XXXVI. After the first day of January, one thousand eight hundred and fifty-nine, no person shall hold any appointment as a physi-

cian, surgeon, or other medical officer, either in the military or naval service, or in emigrant or other vessels, or in any hospital, infirmary, dispensary, or lying-in hospital, not supported wholly by voluntary contributions, or in any lunatic asylum, gaol, penitentiary, house of correction, house of industry, parochial or union workhouse, or poor-house, parish union, or other public establishment, body, or institution, or to any friendly or other society for affording mutual relief in sickness, infirmity, or old age, or as a medical officer of health, unless he be registered under this Act: Provided always, that nothing in this Act contained shall extend to repeal or alter any of the provisions of the Passengers' Act, 1855.

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22 & 23 Vict. Cap. 40.

An Act for the Establishment of a Reserve Volunteer Force of Seamen, and for the Government of the same.

[13th August, 1859.]

Entering as a volunteer not to cause forfeiture of interest in a Friendly Society.

Sect. XXIII. No man by reason of his entering or serving as a volunteer, under this Act, shall lose or forfeit, or be deemed to have lost or forfeited, any interest he may possess, or may have possessed, at the time of his being so entered or serving in any friendly or benefit society, any laws, rules, or regulations of such society to the

contrary notwithstanding; and in case any dispute shall arise between any such society and any such man by reason of such entry or service, it shall be considered as being a dispute directed by the rules of such society to be decided by justices of the peace, pursuant to the provisions of the Acts in force relating to Friendly Societies.

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23 Vict. Cap. 13

An Act to prevent the Members of Benefit Societies from forfeiting their Interest therein by being enrolled in Yeomanry or Volunteer Corps.

[31st March, 1860.]

Members of benefit societies not to incur forfeiture by enrolment as volunteers. Provision in case of dispute.

Sect. I. No man by reason of his enrolment or service in any corps of yeomanry or volunteers shall lose or forfeit, or be deemed to have lost or forfeited, any interest he may possess, or may have possessed, at the time of his being so enrolled or serving, in any friendly or benefit society, any laws, rules, or regulations of such society to the contrary notwithstanding; and in case any dispute shall arise between any such society and any such man by reason of such enrolment or service, it shall be considered as being a dispute directed by the rules of such society to be decided by justices of the peace, pursuant to the provisions of the Acts in force relating to Friendly Societies.

25 & 26 Vic. Cap. 87.

An Act to Consolidate and Amend the Laws relating to Industrial and Provident Societies.

[7th August, 1862.]

Whereas by the Industrial and Provident Societies Act, 1852, it is enacted, that it shall be lawful for any number of persons to establish a society under the provisions thereof and of the therein-recited Act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorized by the laws in force with respect to Friendly Societies or by the said recited Act, by carrying on or exercising in common any labour, trade, or handicraft, or several labours, trades, or handicrafts, except the working of mines, minerals, or quarries beyond the limits of the United Kingdom of Great Britain and Ireland, and also except the business of banking, whether in the said United Kingdom or elsewhere; and that the said Act shall apply to all societies already established for any of the purposes herein mentioned, so soon as they shall conform to the provisions hereof: And whereas by an Act passed in the seventeenth and eighteenth years of Her present Majesty, chapter twenty-five, various provisions were made for the better enabling legal proceedings to be carried on in any matter concern- 15 & 16 Vict. c. 31. 17 & 18 Vict. c. 25.

ing the societies formed under the said Act of 1852: And whereas the last-mentioned Act was amended by an Act passed in the first session of the nineteenth and twentieth years of Her present Majesty, chapter forty: And whereas various societies have been formed and are now carrying on business under the provisions of the said recited Acts, and it is desirable to consolidate and amend the laws relating to such societies: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

19 & 20 Vict. c. 40.

Recited Acts repealed.

I. The Industrial and Provident Societies Act, 1852, and the said recited Acts for the amendment thereof, are hereby repealed from the passing of this Act (*a*).

As to societies registered under recited Acts.

II. All societies registered under the Industrial and Provident Societies Act, 1852, shall be entitled to obtain a certificate of registration on application to the Registrar of Friendly Societies, and for which certificate no fee shall be payable to the Registrar.

Constitution of societies under this Act.

III. Any number of persons, not being less than seven, may establish a society under this Act for the purpose of carrying on any labour, trade, or

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(*a*) By force of this section, a society established under the repealed Acts cannot be sued in an action commenced after the passing of this Act, as it is a mere partnership, *Tontill* v. *Douglas*, 31 L. J. (Q. B.) 6. (See Appendix.)

handicraft, whether wholesale or retail, except the working of mines and quarries, and except the business of banking, and of applying the profits for any purposes allowed by the Friendly Societies Acts, or otherwise permitted by law.

Rules.

IV. The rules of every such society shall contain provisions in respect of the several matters mentioned in the schedule annexed to this Act (*b*).

Registration of society.

V. Two copies of the rules shall be forwarded to the Registrar of Friendly Societies of England, Scotland, or Ireland, according to the place where the office of the society is situate, and shall be dealt with by him in the manner provided by the Friendly Societies Act, 1855; and he shall thereupon give his certifiate of registration, and such certificate shall in all cases be conclusive evidence that the society has been duly registered, and thereupon the members of such society shall become a body corporate, by the name therein described, having a perpetual succession and a common seal, with power to hold lands and buildings, with limited liability.

Certificate of registration to vest all property in society now held in trust for society.

VI. The certificate of registration shall vest in the society all the property that may at the time be vested in any person in trust for the society; and all legal proceedings then pending by or against any such trustee or other officer on account of the society may be prosecuted by or against the society in its registered name without abatement (*c*).

(*b*) For form of these rules see Appendix.

(*c*) A bond given to the trustees of a society registered under previous Act held by operation of this section to be

Copy of rules to be delivered to persons, on demand.

VII. A copy of the rules shall be delivered by the society to every person, on demand, on payment of a sum not exceeding one shilling.

No society to be registered by same name as that of any existing society.

VIII. No society shall be registered under a name identical with that by which any other existing society has been registered, or so nearly resembling such name as to be likely to deceive the members or the public, and the word "limited" shall be the last word in the name of every society registered under this Act.

Member's interests limited to 200*l.*

IX. No member shall be entitled, in any society registered under this Act, to hold or claim any interest exceeding the sum of two hundred pounds.

Publication of name by a society.

X. Every society registered under this Act shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the society is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such society, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be

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vested in the society, who might sue upon it for breaches subsequent to the registration *Queensbury Industrial Society* v. *Pickles*, 14 Weekly Rep. 30, but a society formed before, but registered under this Act, cannot be sued for a debt incurred before registration in an action commenced after the Act. *Lenton* v. *Blakeney Provident Society*, 34 L. J. (Ex.) 211. (See Appendix.)

signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the society.

Penalties on non-publication of name.

XI. If any society under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any officer of such society or any person on its behalf uses any seal purporting to be a seal of the society whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such society, or signs or authorizes to be signed on behalf of such society any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the society, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the society.

Every society to have a registered office.

XII. Every society under this Act shall have a registered office to which all communications and notices may be addressed: If any society registered under this Act carries on business without having such an office, it shall incur a penalty not

Penalty on default.

exceeding five pounds for every day during which business is so carried on.

Notice of situation of registered office.

XIII. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: Until such notice is given the society shall not be deemed to have complied with the provisions of this Act.

Signature, and effect of rules.

XIV. The rules of every society registered under this Act shall bind the society, and the members thereof, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such rules contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to such rules subject to the provisions of this Act; and all monies payable by any member to the society in pursuance of such rules shall be deemed to be a debt due from such member to the society.

Application of Friendly Societies Acts to this Act.

XV. The provisions of the Friendly Societies Acts shall apply to societies registered under this Act, in the following particulars:—

Exemption from Stamp Duties and Income Tax:

Settlements of Disputes by Arbitration or Justices:

Compensation to Members unjustly excluded:

Power of Justices or County Courts in case of Fraud:

Jurisdiction of the Registrar.

Power to member to nominate persons into whose name his interest may be transferred at his death.

XVI. The provisions of the Friendly Societies Act, 1854, whereby a member of any society registered thereunder is allowed to nominate any persons to whom his investment in such society shall be paid, shall extend, in the case of societies registered under this Act, to allow any member thereof to nominate any persons into whose name his interest in such society at his decease shall be transferred: Provided nevertheless, that any such society may, in lieu of making such transfer, elect to pay to any persons so nominated the full value of such interest.

See 18 & 19 Vict. c. 63, s. 31.

As to the winding-up of societies.

XVII. Any society registered under this Act may be wound up either by the court or voluntarily, in the same manner and under the same circumstances under and in which any company may be wound up under any Acts or Act for the time being in force for winding up companies; and all the provisions of such Acts or Act with respect to winding up shall apply to such society, with this exception, that the court having jurisdiction in the winding up shall be the county court of the district in which the office of the society is situated.

Dissolution of society not to prevent winding up of its affairs.

XVIII. In case of the dissolution of any such society, such society shall nevertheless be considered as subsisting, and be in all respects subject to the provisions of this Act, so long and so far as any matters relating to the same remain unsettled, to the intent that such society may do all things necessary to the winding up of the concerns thereof, and that it may be sued and sue, under the pro-

visions of this Act, in respect of all matters relating to such society.

Provisions of Joint Stock Companies Acts to apply.

XIX. The provisions of the Joint Stock Companies Acts as to bills of exchange, and the admissibility of the register of shares in evidence, shall apply to all societies registered under this Act.

Liability of present and past members of society.

XX. In the event of a society registered under this Act being wound up, every present and past member of such society shall be liable to contribute to the assets of the society to an amount sufficient for payment of the debts and liabilities of the society, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves with the qualifications following (that is to say):—

(1.) No past member shall be liable to contribute to the assets of the society if he has ceased to be member for a period of one year or upwards prior to the commencement of the winding up:

(2.) No past member shall be liable to contribute in respect of any debt or liability of the society contracted after the time at which he ceased to be a member:

(3.) No past member shall be liable to contribute to the assets of the society unless it appears to the court that the existing members are unable to satisfy the contributions required

to be be made by them in order to satisfy all just demands upon such society :

(4.) No contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a past or present member (*a*).

Society may be constituted under Companies Acts.

XXI. Any society registered under this Act may be constituted a company under the Companies Acts, by conforming to the provisions set forth in such Act, and thereupon shall cease to retain its registration under this Act.

Members may inspect books.

XXII. Every person or member having an interest in the funds of any society registered under this Act may inspect the books and the names of the members at all reasonable hours, at the office of the society.

Sheriffs jurisdiction in Scotland.

XXIII. The sheriff in Scotland shall within his county have the like jurisdiction as is hereby given to the judge of the county court in any matter arising under this Act.

Annual returns to be prepared as registrar may direct.

XXIV. A general statement of the funds and effects of any society registered under this Act shall be transmitted to the registrar once in every year, and shall exhibit fully the assets and liabilities of the society, and shall be prepared and made out within such period, and in such form, and shall

(*a*) A holder of fully paid up shares in a society established before but registered under this Act, held not liable as a contributory. *Sheffield Co-operative Society, In re*, 13 Weekly Rep. 667. (See Appendix.)

comprise such particulars as the registrar shall from time to time require; and the registrar shall have authority to require such evidence as he may think expedient of all matters required to be done, and of all documents required to be transmitted to him under this Act; and every member of or any depositor in any such society shall be entitled to receive, on application to the treasurer or secretary of that society, a copy of such statement, without making any payment for the same.

Recovery of penalties.

XXV. All penalties imposed by this Act, or by the rules of any society registered under this Act, may be recovered in a summary manner before two justices, as directed by an Act passed in the eleventh and twelfth years of the reign of Her present Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of "the Duties of Justices of the Peace out of Sessions "within England and Wales with respect to summary Convictions and Orders."

Short title.

XXVI. This Act may be cited as "The Industrial and Provident Societies Act, 1862."

Schedule of Matters to be provided for in the Rules.

1. Object and name, and place of office of the society, which must in all cases be registered as one of limited liability.

2. Terms of admission of members.

3. Mode of holding meetings and right of voting, and of making or altering rules.

4. Determination whether the shares shall be transferable, and in case it be determined that the shares shall be transferable, provision for the form of transfer and registration of shares, and for the consent of the committee of management and confirmation by the general meeting of the society; and in case shares shall not be transferable, provision for paying to members balance due to them on withdrawing from the society.

5 Provision for the audit of accounts.

6. Power to invest part of capital in another society; provided that no such investment be made in any other society not registered under this Act, or the Joint Stock Companies Act, as a society or company with limited liability.

7. Power and mode of withdrawing from the society, and provisions for the claims of executors, administrators, or assigns of members.

8. Mode of application of profits.

9. Appointment of managers and other officers, and their respective powers and remuneration.

APPENDIX I.

RULES FOR A FRIENDLY SOCIETY, REQUIRED TO BE INSERTED PURSUANT TO 18 & 19 VICT., C. 63, S. 25.

Name, Place of Meeting, and Objects of Society.

This society shall be called "The Friendly Society," the business thereof shall be held at [*state place of meeting*], and the objects thereof shall be [*here set forth the whole of the objects and intentions for which the society is founded*].

Application of Funds.

All monies received on account of contributions, donations, admission, fines, or otherwise, shall be applied towards carrying out the objects of the society, according to the rules and tables thereof; any officer misapplying the funds shall repay the same and be excluded.

Appointment of Trustees, Treasurer, Secretary, and Committee of Management.

At the first meeting of the society after these rules are certified by the Registrar, there shall be elected by a majority of the members then present, (*three*) trustees, a treasurer, a secretary, and a committee of management, consisting of (*ten*) persons. The trustees shall continue in office during the pleasure of the society, and be removable at a general meeting, and in case of a vacancy or vacancies another or others shall be elected by a majority of

members at a meeting called for that purpose. The treasurer, secretary, and committee of management shall all continue in office until the general annual meeting of the society, unless previously removed by a resolution of the major part of the members present at any meeting called for that purpose; and at every annual meeting, a treasurer, secretary, and committee shall be appointed for the ensuing year, or in failure thereof the officers last appointed shall be considered as again appointed, and in case any officer other than a trustee shall die or be removed prior to such annual meeting, the committee of management shall appoint a person to fill up the vacancy. A copy of every resolution appointing a trustee or trustees shall be sent to the Registrar of Friendly Societies in England under the hands of three members, and signed by such trustee and countersigned by the secretary. Sects. 17, 25.

Powers and Duties of Trustees, Treasurer, Committee of Management and Secretary.

The trustees shall be admitted to all meetings of the committee of management, and shall be at liberty to take part in the proceedings thereof, and vote on any question under discussion; they shall do and execute all the several duties and functions delegated to them by the statute relating to Friendly Societies, unless otherwise herein provided for.

In case any trustee, being removed, shall refuse or neglect to assign or transfer any property of the society as the committee of management shall direct, he shall (if he be a member) be expelled the society, and shall cease to have any claim on the society on account of any contributions paid by him.

The treasurer shall, in the month of in every year, and also when required by the trustee or a majority of the trustees of the society, render to the trustees of the society a true account of all monies received and paid by him on account of the society; and shall also, when required by a majority of the trustees, pay over all monies remaining in his hands, and assign and deliver all securities and effects, books, papers, and property of or belonging to the society in his hands or custody to such person or persons as a majority of the trustees shall appoint. He shall be responsible for such sums of money as may from time to time

be paid into his hands by the secretary, or by any person on account of this society; he shall balance his cash account monthly, and supply the secretary with a duplicate thereof, and shall, if required, attend every general meeting. He shall, before taking upon himself the execution of his office, give security pursuant to the 18 & 19 Vict. c. 63, s. 21.

The committee of management shall meet on every at the hour of . Any (*six*) of the committee duly assembled at any such meeting shall form *a quorum*, and shall have full power to superintend and conduct the business of this society according to the rules provided for the government thereof, and shall in all things act for and in the name of the society; and all acts and orders, under the powers delegated to them, shall have the like force and effect as the acts and orders of this society at any general meeting. Every question at such meeting shall be decided by a majority of votes; and if the votes are equal, the chairman shall have a casting vote. Any (*two*) of the committee may call a special meeting thereof, by giving (*seven*) clear days' notice in writing to the secretary, but at such special meeting no other business than that specified in the notice shall be taken into consideration.

The committee shall convene all the meetings of the society, on such requisitions as are herein mentioned.

The secretary shall give his attendance at all meetings of this society; he shall record correctly the names of the committee or trustees there present, and the minutes of their proceedings, which he shall transcribe in a book, to be authenticated by the signature of the chairman as the proceedings of the meeting; he shall receive proposals for admission, and demands for allowances of every description granted by the rules; he shall keep the accounts, documents, and papers of the society in such manner and for such purposes as the committee may appoint, and shall prepare the annual and other returns required by the Friendly Societies Act, to be sent to the Registrar of Friendly Societies. He shall on all occasions, in the execution of his office, act under the superintendence, control, and directions of the committee.

Investment of Funds.

So much of the funds of the society as may not be wanted for immediate use, or to meet the usual accruing liabilities, shall,

with the consent of the committee of management, be invested by the trustees in such of the following ways as the said committee shall direct; namely, in any savings bank, or in the public funds, or with the Commissioners for the Reduction of the National Debt, or upon government or real securities in Great Britain or Ireland, or upon debentures, mortgages, or securities of any company, incorporated by charter or Act of parliament, and paying a dividend, or in or upon the security of any county, borough, or other rates authorized to be levied and mortgaged by any Act of parliament.

Audit of Accounts.

The committee shall cause the accounts of the society to be regularly entered in proper books, and shall cause a statement of the accounts of the society, with all necessary vouchers, up to the end of the months of June and December in each year, to be made out and laid before two auditors, to be chosen by the members at the meeting held before each yearly meeting of the society, and shall lay before each such meeting a balance sheet signed by the auditors, showing the receipts and expenditure, and the assets and liabilities of the society, together with a statement of the affairs of the society, since the last ordinary meeting, and of their then condition, and the auditors shall make to such meeting a report upon the balance sheet so laid before them, and in case they do not adopt the same, or any part thereof, shall specially report thereon to such meeting.

The books and accounts of the society shall be open to the inspection of any member at all reasonable times, and every member shall be entitled to a copy of such statement and report.

Settlement of Disputes.

If any dispute shall arise between any member or person claiming through or under a member, or under the rules of the society, or the executors, administrators, nominee or assigns of a member, and the trustee, treasurer, or other officer of the society, or the committee thereof, it shall be referred to arbitration.

At the second meeting of the society after these rules are cer-

tified by the Registrar, five arbitrators shall be named and elected, none of them being directly or indirectly beneficially interested in the funds of the society; and in each case of dispute the names of the arbitrators shall be written on pieces of paper, and placed in a box or glass, and the three whose names are first drawn out by the complaining party, or by some one appointed by him or her, shall be the arbitrators to decide the matter in difference. In case of a vacancy or vacancies, another or others shall be elected at a general meeting.

N.B.—Disputes may be referred to justices instead of to arbitration, if the society think fit, and then the following rule must be substituted:—If any dispute, &c. (as above), it shall be referred to justices, pursuant to 21 & 22 Vict., c. 101, s. 5.

Separate Books of Accounts.

A book or books shall be kept in which shall be entered all monies received or paid on account of each and every particular fund or benefit assured to the members, their husbands, wives, children, fathers, mothers, brothers, or sisters, nephews or nieces, for which a separate table of contributions payable is adopted, distinct from all monies received and paid on account of any other benefit or fund.

Expenses of Management.

Every member shall pay the sum of per month towards defraying the necessary expenses of management; and a separate account shall be kept of such contributions and expenses, and shall be audited in the same way as the other accounts of the society.

New Rules and Alteration of Rules.

No new rule shall be made, nor any of the rules herein contained, or hereafter to be made, shall be amended, altered, or

rescinded, unless with the consent of a majority of the members present at a general meeting of the society specially called for that purpose.

Notice of Alteration in Place of Meeting.

In case of any alteration in the place of meeting or dissolution of this society, notice thereof shall be sent to the Registrar of Friendly Societies in England, within fourteen days after such removal or dissolution, under the hands of two of the trustees or the secretary or other principal officer, and three of the members of the society.

RULES FOR AN INDUSTRIAL SOCIETY, AND REQUIRED TO BE INSERTED PURSUANT TO THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1862.

1.—*Name, Place of Office, and Object of Society.*

This society shall be called the " Industrial and Provident Society, Limited," and the registered office of the Society shall be at No. , Street, in the parish of , and county of . The object of the society is to carry on in common the trade or business of both wholesale and retail.

2.—*Admission of Members.*

No person shall be admitted as member of the Society except by the Committee of Management, and every member on election shall take one or more share or shares. He shall pay as entrance money, and shall have given to him a copy of the rules of the Society.

3.—*Mode of Holding Meetings.—Voting.*

The half-yearly meetings of the members shall be held on the first day in the months of and in every year; the meeting held in the month of shall be considered as the general annual meeting. The meetings shall be held at the place of business of the society, or at such other place as any half-yearly meeting shall determine on. No meeting of the society shall proceed to business unless at least members of the society, entitled to vote thereat, be present within one hour of the time of meeting, otherwise such meeting, if it be the ordinary annual or half-yearly meeting of the society, or a special general meeting convened by the Committee of Management, shall stand adjourned to that day week; but if it be convened by notice from the members, shall be absolutely dissolved. But any general meeting may adjourn from time to time for any period not exceeding clear days, and no meeting shall be rendered incapable of transacting business by the want of a quorum after the chair has been taken.

At every half-yearly meeting of the society a general statement, signed by three of the said committee and the secretary, showing the transactions of the society during the past half-year, its present condition and the state of its affairs generally, and the auditor's report and balance sheet, shall be read to the society, and the books and accounts, and the statement of accounts audited and approved by the auditors, shall be produced for the inspection of the members, and such other business transacted as may be deemed proper and expedient. The said committee may of their own authority call a special general meeting at any time, and such a meeting shall also be called upon the requisition in writing of any members sent to the secretary, stating therein the purpose of such meeting; and six clear days' notice in writing shall be sent to the address of each member, specifying the time, place, and objects thereof; and at any such meeting no other business can be transacted than the business specified in the notice convening it. Each meeting shall choose a chairman, who shall be one of the said committee, if any are present,

who, if at any meeting the votes are equal shall have the casting vote. All questions shall be decided in the first instance by a show of hands, unless five members present demand a ballot, in which case a ballot shall be taken, but no proxies shall be admissible. Each member shall have only one vote.

4.—*Making or altering Rules.*

That no new rules shall be made nor any of the rules herein contained or hereafter to be made shall be amended, altered, or rescinded, unless with the consent of a majority of the members present at a general meeting of the society specially called for that purpose.

5.—*Registration of Shares.*

A share register book shall be kept by the secretary, in which shall be entered the following particulars:—The christian and surname, place of residence, profession, or business, and date of entrance of each member of the society, the number of shares held by each member, with the number and value of each share, the date when the member became such, and the date at which he ceased to be a member in respect of any share. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any profits payable in respect of such share. All transfers of shares shall be registered in a similar way.

6.—*Transfer of Shares.*

Any member may, with the consent of the Committee of Management, transfer all or any of his shares to any other member of the society, or to any other person, upon giving one calendar month's notice in writing to the secretary, such notice to contain the christian and surname, place of abode, and profession or business of the proposed transferee, and the numbers

of each share to be transferred, and the consideration to be paid for the transfer; no transfer, however, shall be valid, except the same shall be confirmed at the next general meeting of the society. All transfers shall be in the following form, namely:—

I of (a) in consideration of the sum of paid to me by of , do hereby transfer to the said , share (or shares), numbered in "The Industrial and Provident Society, Limited," standing in my name in the books of the Society, to hold unto the said , subject to the several conditions on which I held the same at the time of the execution hereof, and I the said , do hereby agree to take the said share (or shares), subject to the same conditions, as witness our hands the day of (b).

7.—*Withdrawal of Members.*

No shares shall be transferable; but any member who has paid up all his subscriptions may withdraw from the society on giving months' notice in writing to the secretary of his intention; and any member may withdraw without paying up all his subscriptions with the consent of the Committee of Management. Upon the withdrawal of any member he shall receive payment of the balance then standing to his credit in the books of the society, with all arrears of dividend and profits, if any, within months after such withdrawal. Any member having participated in the profits shall, in case of withdrawal, forfeit such sum not exceeding , as the said committee may think proper; such forfeits to go to the funds of the society.

(*a*) These words should be omitted if no consideration be paid.

(*b*) If the shares are not to be transferable, then the next rule will have to be adopted, but not both rules.

Members may withdraw any sum above £ , according to the following scale of notice:—

£ on application to the said Committee.

£	to £	weeks.	£	to £	weeks.
£	„	„		„	„
£	„	„		„	„

No money to be withdrawn during the first 12 months except in cases of distress.

A member being in distress may withdraw any sum he may have in the funds of the society above £2, at the discretion of the said committee.

8.—*Audit of Accounts.*

The Committee of Management shall cause the accounts of all business carried on by the society to be regularly entered in proper books, and shall cause a statement of the accounts of the society, with all necessary vouchers, up to the end of the months of June and December in each year, to be made out and laid before the auditors, not less than ten nor more than fifteen days before each half-yearly meeting of the society, and shall lay before each such meeting a balance-sheet, signed by the auditors, showing the receipts and expenditure, and the assets and liabilities of the society, and also the balance standing to the credit of each member, together with a statement of the affairs of the society since the last ordinary meeting, and of their then condition; and the auditors shall make to such meeting a report upon the balance-sheet so laid before them, and in case they do not adopt the same, or any part thereof, shall specially report thereon to such meeting. Every such balance-sheet, signed by the auditors, shall, after it has been approved by any such meeting, be binding upon all members of the society, except as to any error exceeding £10 discovered within one calendar month thereafter; and the books of account of the society shall be open to the inspection of any member at all reasonable times.

9.—*Investment of Capital.*

The Committee of Management may, if they shall think fit, invest in any company established under the Joint Stock Com-

panies Act, with limited liability, or under the Industrial and Provident Societies Act, 1862, any part of the capital funds of the society, at such rate of interest and upon such terms as to repayment or otherwise as may be agreed upon.

10.—*Death of Members.*

Upon the death of any member of the society, his legal personal representative shall, within one month thereafter, give notice thereof, in writing, to the secretary, stating the christian and surname, place of abode, and profession, or business of such legal personal representative, in order that the shares of the deceased members may be registered in the name of such legal personal representative, or of such other person or persons entitled thereto, or as he or she shall by such notice direct, or in default thereof shall pay a fine of 1*s.* per share to the secretary; and upon such notice being given, the shares of such deceased members shall be transferred into the name of such legal personal representative, or into the name of such other person or persons entitled thereto as such representative shall direct.

11.—*Application of Profits.*

The net profits of all business carried on by the society, after paying or providing for the expenses of management, interest on money borrowed, and dividends upon paid-up subscriptions, shall once in every half-year be applied, in the first place, in the repayment of monies borrowed, or any instalment due in respect thereof, and subject thereto to all or any such purpose or purposes as are allowed by the Friendly Societies Acts or permitted by law, and in such proportion as may be agreed upon at any half-yearly meeting of the society. [*The Rule may, if thought fit, state specifically the purpose or purposes to which the profits are to be applied.*]

12.—*Officers of Society.*

At the first meeting of the society, after these rules are certified by the Registrar, there shall be elected by a majority of the members then present —— persons as a committee of management, a treasurer, secretary, two auditors, and five arbitrators (the persons elected as arbitrators not being directly or indirectly interested in the funds of the society), who shall all continue in office until the general annual meeting of the society, unless previously removed by a resolution of the majority of members present at any meeting called for that purpose; and at every general annual meeting —— of the said committee shall go out of office in rotation, and others shall be elected in their place; and at such meeting a treasurer, secretary, auditors, and arbitrators shall be appointed for the ensuing year, or in failure thereof the officers last appointed shall continue to hold office; and if any of such officers dies or is removed previous to such meeting, the said committee shall appoint a person to fill the vacancy. All retiring members of the said committee or other officers of the society shall be immediately reeligible. The officers of the society shall receive such remuneration for their services as shall be agreed upon at any general annual meeting.

Every person appointed to any office touching the receipt, management, or expenditure of money for the purposes of the society shall, before entering upon the duties of his office, give such security as shall be deemed sufficient by the committee of management.

13.—*Management.*

The business and affairs of the society shall be conducted by the committee of management, who shall have the control of all business carried on by or on account of the society, the determination of the persons to be employed therein, the rates of payment to be made for work or service done on account of the society, and the appointment and removal of the salesmen or other officers necessary for conducting the business, and may assign to

any such officers such duties and salaries as they think fit, subject to the approval of the half-yearly meetings.

The committee of management shall meet every —— day evening at —— o'clock, and any —— of the said committee shall form a quorum; it shall in all things act for and in the society's name, and all acts and orders under the powers delegated to it shall have the like force and effect as if they were the acts and orders of a majority of the members of the society at a general meeting thereof. Every question at such meeting shall be decided by a majority of votes, and if the votes are equal, the chairman shall have a casting vote. Any —— of the said committee may call a special meeting thereof by giving one clear day's notice, in writing, to the secretary; but at such special meeting no other business than that specified in the notice shall be taken into consideration. The said committee shall convene all meetings of the society on such requisitions as are herein mentioned. Any member of the said committee not present at a quarter past the hour of meeting shall be fined —— unless he can show a reason for his absence to the satisfaction of the majority of the said committee. The secretary shall keep a record of all members present at each meeting of the said committee. The chairman of each meeting shall sign the minutes of the proceedings and all contracts then entered into.

The treasurer shall be responsible for such sums of money as may from time to time be paid into his hands by the secretary or by any person on account of this society; he shall render his cash account monthly, and supply the secretary with a duplicate thereof, and shall, if required, attend every general meeting. He shall, before taking upon himself the execution of his office, give such security as the committee of management shall think necessary.

The secretary shall give his attendance at all meetings of the society and committee of management; he shall record correctly the names of the said committee there present, and the minutes of their proceedings, which he shall transcribe into a book, to be authenticated by the signature of the chairman as the proceedings of the meeting; he shall receive proposals for admission, and keep the accounts, documents, and papers of the society in such manner and for such purposes as the said committee may appoint, and shall prepare the annual and other returns required to be

sent to the Registrar of Friendly Societies in England; he shall receive the contributions, fines, and other payments due to the society, and at the close of every meeting pay the same to the treasurer. The secretary shall on all occasions in the execution of his office act under the superintendence, control, and directions of the said committee.

14.—*Nomination by Members.*

The secretary shall keep a book in which a member may nominate in writing the person to whom his shares and interest, not exceeding 50*l.*, shall, on his decease, be transferred, such person being the husband, wife, father, mother, child, brother, or sister, nephew, or niece of such member. Any member may revoke such nomination by a written notice to that effect, signed by himself; and it shall be the duty of the president to see the nomination erased. The member to pay 3*d.* to the management fund for each nomination or revocation. The secretary neglecting to ask a new member to nominate within three months of his admission to forfeit 3*d.*

The committee of management may, if they think fit, instead of making such transfer, pay to any person or persons so nominated the full value of the interest of the member as would have been paid to the member if he had at the time of his death withdrawn from the society.

15.—*Settlement of Disputes.*

If any dispute shall arise between any member or any person claiming through or under a member, or under the rules, or the executors, administrators, or nominee of a member, and the society, or the committee of management thereof, it shall be referred to arbitration; and in each case of dispute the names of the arbitrators shall be written on pieces of paper and placed in a box or glass, and the three whose names are first drawn out by the complaining party, or by some one appointed by him, shall

be the arbitrators to decide the matters in difference. The costs of the reference shall be paid by such party or by the parties in such proportion as the arbitrators shall direct; and the parties requiring arbitration shall, previous to the matter being gone into, deposit with the secretary the sum of 10*s.* to abide the result. [*Disputes may, if the society think fit, be referred to justices instead of to arbitration.*]

Rules for a Cattle Assurance Society.

1. This association shall be open to all persons whose lands are within the boundary of the county of ——, or within any district in any adjacent county for which a district committee shall have been appointed, and shall have been approved by the central committee; provided that the central committee be authorised to exclude from the operation of the society any parish, or division of a parish, which in their opinion from its situation may be considered more than usually liable to the cattle plague or pleuro-pneumonia.

2. That the association shall consist of a chairman, two vice-chairmen, three trustees, a treasurer, a secretary, of all occupiers of land insuring the whole of their stock, of landowners any of whose tenants shall be insured in the association, and of subscribers of not less than 1*l.* to the funds of the association.

3. That no cattle dealer, or butcher, or town cowkeeper, shall be admitted, except by special agreement with the central committee.

4. That the affairs of the association shall be managed by a central committee, consisting of gentlemen appointed at the meeting held on the ——, and of such number of members to represent any district committee as the central committee shall appoint, with power to add to their number.

5. That district committees be appointed for such area as the central committee may fix, to consist of all members of the central committee resident within the district, and of such persons (being where practicable members of the association) as any district committee may appoint; and that all district committees shall be approved by the central committee.

6. That meetings of the central committee shall be held fortnightly at ——, and whenever convened by the chairman and vice-chairman on due notice, and that meetings of all district committees shall be held not less than once every week; in each case—that three members shall form a quorum empowered to act: in the absence of the chairman or vice-chairman they shall appoint their own.

7. That a general meeting of the association shall be held once a quarter, on a day to be fixed by the central committee on their last meeting of the quarter; six days' notice of such meeting to be advertised in the ——, the ——, and the ——, in the county of ——; at which meeting a general report of the position of the association, together with a statement of accounts to the end of the previous quarter, shall be presented.

8. That the treasurer shall keep an account of all moneys received and paid on account of the association, which account shall be laid before each meeting of the central committee. A copy of every resolution appointing a trustee or trustees shall be sent to the Registrar of Friendly Societies in England under the hands of three members, and signed by such trustee and countersigned by the secretary.

9. All moneys payable by the association shall be paid by cheque, signed at any meeting of the central committee by the chairman of such meeting, one member of the committee, and the secretary.

10. Any person wishing, or required by these rules, to insure any cattle, shall apply to the secretary of the central committee, or to a member of the district committee, for the necessary form of declaration, which such person shall properly fill up and shall sign with his name in full and postal address; and such declaration shall be certified to be correct by two members of the district committee, or by one with the consent of the district committee, and if required by such members, also, by an inspector (a member of the Royal Veterinary College of Surgeons) appointed by the central committee; such members or inspector further to certify that the cattle proposed to be insured are free from the cattle plague or pleuro-pneumonia. This declaration, when properly filled up and signed, shall be forwarded to the district committee to be taken into consideration by them at their next weekly meeting, and if approved by a majority of the

members present shall be forwarded to the secretary of the central committee, to be laid before them at their next meeting; and if such application shall be approved by a majority of the members present, the party thus applying shall be accepted as an insurer of such cattle, upon paying the amount of the deposit and call required of him under the rules of the association; and every person so insuring shall pay all further calls at such times as may be required by the central committee.

11. For the purposes of insurance, cattle will be classified as follows:—

A. Dairy cows and in-calf heifers.
B. Bulls and feeding stock.
C. Store stock.
D. Calves over six months old.

And on these the maximum rate of insurance will be limited to—

£18 in classes A. and B.
£10 in class C.
£5 in class D.

An average value will be put by the insurer on the animals proposed to be insured in each class; such value to be certified by two members of the district committee.

12. No person shall be admitted a member of the association unless he is able to satisfy two members of the district committee that he has not either disease on his premises, nor introduced any strange cattle during the preceding thirty days, except with such precautions as may be satisfactory to the central committee. The central committee reserve to themselves the right to receive or reject any proposal for insuring cattle, or to exclude, subject to an appeal to a general meeting, any insurer.

13. That the district committee shall have the power of inspecting, or ordering to be inspected, the homesteads of members of the association, to order them to be properly cleansed and whitewashed where necessary, and stagnant waters removed.

14. That any insurer having any cattle taken ill with any disease resembling in its symptoms the cattle plague, or pleuro-pneunomia, shall immediately give notice in writing to the secretary, to one member of his district committee, and to the inspector of his district; and any member neglecting to give such notice on the first appearance of disease, or neglecting to

pay proper attention to all orders of the said committee, shall forfeit all claims to compensation.

15. That where any animal shall have died of the cattle plague, or of pleuro-pneumonia, or been killed by order of a duly qualified inspector, a certificate of such death signed by two members of the district committee and veterinary surgeon or inspector of the district, shall be sent to the district committee, and if approved by them shall be forwarded to the central committee, and by them registered as a claim on the association, provided the claimant shall have in all respects conformed to the rules of the association.

16. That every person insuring in the association shall be liable to pay calls to the amount of ten per cent., or 2*s.* in the pound, on the amount for which he shall be insured in classes A. and D., and seven and a half per cent., or 1*s.* 6*d.* in the pound, on his insurance under classes B. and C.

17. That each member shall pay at the commencement of each quarter, one-fourth of the sum for which he may be liable in respect of his insurance; the central committee having the power, not less than ten members being present, to defer making a call after the expiration of the second quarter, provided the losses shall not exceed two-thirds the amount of the first quarter's call.

18. That not more than one-half of the amount in hand at the expiration of any one quarter be paid to insurers having claims on the association, the balance being carried on to the period of the expiration of the Society, when, if the funds are sufficient, all claims shall be paid in full, and the balance, if any, distributed *pro rata*; but should they prove insufficient, all claims shall be paid *pro rata*.

19. That under no circumstances shall more than three-fourths of any member's claim on the association be paid before the period of the expiration of the society.

20. That in case of loss by cattle plague, insurers shall be entitled to three-fourths of the insured value of the animal; and in the case of loss by pleuro-pneumonia to three-fourths the insured value, and one-fourth of the salvage, the balance going to the funds of the association.

21. That so long as the thirteenth and fifteenth clauses of the Cattle Diseases Act shall remain in operation, the association

shall pay one-half of the insured value of the animals slaughtered, provided that with the sum recoverable under the said Act the whole amount to be paid shall not exceed three-fourths of the insured value.

22. That all payments to which any member shall be liable shall be payable forthwith to the treasurer of the association, and if not paid within fourteen days after the date of the notice of call, such member shall not be entitled to any claim upon the funds of the association, and shall be liable to exclusion at any meeting of the central committee.

23. That all members of the committees shall give their attention and services gratuitously.

24. Any member who shall lose (except by cattle plague or pleuro-pneumonia) or dispose of any insured cattle, shall upon the production of a certificate to that effect, signed by two members of the association, be freed from any further calls in respect of such stock. Any member wishing to purchase any cattle in addition to the number of those he has insured, must first obtain a permission, signed by two members of a district committee, and shall forthwith insure the additional number so purchased, but shall not be entitled to any compensation in the event of loss until the said cattle have been in his possession twenty-one days, during which time he must, as far as possible, keep them entirely separate from all cattle that are on his farm, and are already insured; and that no insured cattle shall be allowed to graze on any inclosed public way, or upon any common or waste, and that no cattle shall be put out at ley without special permission from the central committee, or needlessly exposed to risk of infection from cattle plague or pleuro-pneumonia.

25. Veterinary surgeons when called in shall be allowed such sum as may be agreed upon between them and the central committee.

26. That the society shall continue to the day of 186 .

27. That the central committee, whenever they think fit, may and shall, at any time upon a requisition made in writing by any twenty or more members, convene a general meeting of the association, by giving not less than fourteen days' notice of such meeting in some public newspaper circulating in the county; and the members present at any such meeting shall have power by

the majority of votes to alter, amend, or rescind any rules of the association, such alterations or amendments to be specified in advertisement, and generally to determine all questions relating to the association, which shall be named in such notice or requisition.

28. Notwithstanding anything hereinbefore contained, a general meeting of members convened before the of 186 , may, by the votes of three-fourths of the members present, resolve to continue the association for any further period not exceeding three calendar months, with such alterations in rules as may be deemed necessary. And again at any time before the expiration of such extended, or any subsequently extended period, the association may, in like manner, be further extended, but in no case shall any person insuring after any extension be liable for calls made previous to such extended period, and any person wishing to retire from the Association on the of 186 , or at the expiration of any extended period, shall be allowed to do so, provided he shall have paid up all calls then due.

29. That any person not becoming an insured member, or not proposing to become such before the end of the first quarter, shall be liable to pay all back calls.

30. That no insured member shall be liable for back calls on any newly acquired stock.

31. That if any dispute shall arise between any member or person claiming under or on account of any member, or under the rules of the society, and the trustees, treasurer, or other officers of the society, or the committee thereof, it shall be referred to arbitration. At the second meeting of the society after these rules are certified by the registrar, five arbitrators shall be named and elected, none of them being directly or indirectly beneficially interested in the funds of the society; and in each case of dispute the names of the arbitrators shall be written on pieces of paper and placed in a box or glass, and the three whose names are first drawn out by the complaining party, or by some one appointed by him or her, shall be the arbitrators to decide the matter in difference. In case of a vacancy or vacancies, another or others shall be elected at a general meeting.

32. In case of the death of any member, his executor or administrator may become a member in his place, and be en-

titled to the same privileges, and be subject to the same liabilities.

33. That all claims for loss on stock must be lodged with the secretary within seven days of the expiration of the quarter in which the loss may occur, otherwise any payment to which the claimant would have been entitled will be deferred to the subsequent quarter, and all claims not sent in within fourteen days after the of 186 , will be liable to forfeiture.

34. So much of the funds of the society as may not be wanted for immediate use, or to meet the usual accruing liabilities, shall, with the consent of the committee of management, be invested by the trustees in such of the following ways as the committee shall direct, viz., in a savings bank, or in the public funds, or with the commissioners for the reduction of the national debt, or upon government or real securities in Great Britain or Ireland, or upon debentures, mortgages, or securities of any company incorporated by charter or Act of parliament, and paying a dividend, or on or upon the security of any county, borough, or other rates authorized to be levied and mortgaged by Act of parliament.

35. Every member shall pay the sum of 4*d.* per animal toward defraying the necessary expenses of management; and a separate account shall be kept of such contributions and expenses, and shall be audited in the same way as the other accounts of the society.

36. The committee shall cause the accounts of the society to be regularly entered in proper books, and shall cause a statement of the accounts of the society, with all necessary vouchers up to the end of the months of June and December in each year, to be made out and laid before two auditors, to be chosen by the members at the quarterly meeting held next before each yearly meeting of the society, and shall lay before each such meeting a balance-sheet signed by the auditors, showing the receipts and expenditure, and the assets and liabilities of the society, together with a statement of the affairs of the society since the last ordinary meeting, and of their then condition, and the auditors shall make to such meeting a report upon the balance-sheet so laid before them, and in case they do not adopt the same, or any part thereof, shall specially report thereon to such meeting.

37. The books and accounts of the society shall be open to the inspection of any member at all reasonable times, and every member shall be entitled to a copy of such statement and report.

38. That in case of any alteration in the place of meeting or dissolution of this society, written notice thereof shall be sent to the Registrar of Friendly Societies in England, within fourteen days after such removal or dissolution, signed by two of the trustees, or by the secretary, or principal officer, and three of the members of the said society.

FORMS.

Form of Appointment of Trustees.

Reg. No.———————

_____Society,

held at _____

_____

in the county of _____

Dated ——— *day of* ——— 18—.

To the Registrar of Friendly Societies in England.

At a meeting of the said society held at the above-named place of meeting on the ——— day of ——— in the year of our Lord ——— (the said meeting being called pursuant to the rules), the following resolution was duly proposed, seconded, and carried by the requisite majority of votes; viz.

"That _____

_____

_____

_____

_____

_____

be trustees of the said society.

We do hereby request you to deposit this resolution with the rules of the society in your custody."

_____
_____ } *Members of the said society.*
_____

_____ *Secretary.*

Signatures of the trustees elected at the said meeting.

Each trustee must sign his Christian and surname, and state his occupation and place of residence at full length underneath.

_____

_____

_____

_____

_____

FORM OF DECLARATION on ALTERATION, &c. of Rules enrolled or certified *previous* to 13 & 14 Vict. c. 115 (15th August, 1850.)

Register No. ——

(*State name of house of meeting—street, parish, and county.*) held at ——SOCIETY,

I, —— of —— the clerk * —— of the above-mentioned society do solemnly and sincerely declare that in the altering, amending, or rescinding the rules of the said society, or making new rules (as the case may be), the directions of the Act under which such society was established have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits;' and to make other Provisions for the Abolition of unnecessary Oaths."

Taken and received before me one of Her Majesty's justices of the peace for the said county of ——, at ——, in the said county, this —— day of ——, 186 .

When the rules are altered, amended, or rescinded, or new ones made, two fairly written copies "*of the proposed alterations, amendments, or additions only*" should be sent to the Registrar, each copy with the name, &c., of the society at the beginning, signed by three members and the secretary, and accompanied with the declaration. The register number on the rules or alterations, &c., last certified should be written at the top of the paper.

* *Or secretary* or one of the officers.

For Societies established under 13 *&* 14 *Vict. c.* 115, *and also under* 18 *&* 19 *Vict. c.* 63.

FORM OF DECLARATION on ALTERATION, &c., of Rules certified under 13 & 14 Vict. c. 115, and also under 18 & 19 Vict. c. 63.

Register No.——.

(*State name of house of meeting—street, parish and county.*) held at ——SOCIETY,

I, —— of —— the clerk* —— of the above-mentioned society, do solemnly and sincerely declare that in the altering, amending, or rescinding the Rules of the said Society, or making new rules (as the case may be), the rules of the said society have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to Substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial Oaths and Affidavits; and to make other Provisions for the Abolition of unnecessary Oaths."

Taken and received before me, one of Her Majesty's justices of the peace for the said county of ——, at ——, in the said county, this —— day of —— 18 .

When the rules are altered, amended, or rescinded, or new ones made, two fairly written copies "*of the proposed alterations, amendments, or additions only*" should be sent to the Registrar, each copy with the name, &c., of the society at the beginning, signed by three members and the secretary, and accompanied with the declaration. The register number on the rules or alterations, &c., last certified, should be written at the top of the paper.

* *Or secretary or* one of the officers.

FORM OF AGREEMENT FOR THE DISSOLUTION OF A SOCIETY.
Register No. ——.

ARTICLES OF AGREEMENT made this —— day of —— in the year —— between the several persons whose names are hereunto subscribed, being respectively members of a friendly society, called "The —— Friendly Society," established at —— in the county of ——, under the provisions of the statute then in force relating to friendly societies, and now held at ——.

Whereas at a meeting of the members of the said society specially called in that behalf, held at —— on the —— day of ——, it was resolved and agreed to dissolve or determine the said society: And whereas the several persons whose names are mentioned in the schedule to these presents are all the present members, honorary or otherwise, of the said society, and the number of votes of consent to which each member is entitled in relation to or concerning the dissolution of the said society is set opposite to his name in the said schedule, and the total number of such votes amounts to ——: And whereas the number of votes to which the said several persons parties hereto are entitled amounts together to ——; being five-sixths in value of such total number of votes as aforesaid: And whereas the names of all the members of the said society now receiving or now entitled to receive any relief, annuity, or other benefit from the funds thereof, and who have agreed to execute these presents, are mentioned in the first part of the said schedule hereto, and the names of all such members as aforesaid who have refused to execute these presents, but whose respective claims have been or are intended to be forthwith duly satisfied, or for the satisfying of which claims respectively adequate provision has been or is intended to be forthwith made, are mentioned in the second part of the said schedule hereto: And whereas it hath been agreed and determined by and between the said parties hereto that the funds and property of the said society shall be appropriated and applied in the manner following, (that is to say): First, in paying and satisfying all the debts of the said society and all the costs and expenses incurred or sustained in obtaining the execution of these presents, or otherwise in relation thereto, or to the dissolution of the said society. Secondly, in satisfying or making adequate provision

for satisfying the claims of all the members of the said society whose names are respectively mentioned in the said second part of the said schedule hereto; and thirdly, after making all such payments and provisions as aforesaid, shall be appropriated or divided in manner following: [here either state clearly the plan of dividing the funds, or say "the residue shall be appropriated and divided among such persons interested in the funds of the society, in such manner and in such shares and proportions as the Registrar of Friendly Societies in England shall by writing under his hand award and determine."]

Now these presents witness, and it is hereby agreed and declared by and between the said several persons, parties hereto, as follows, namely, that the said society shall be dissolved and determined as from the —— day of —— last; that the funds and property of the said society shall be sold and converted into money; and that the monies to be produced thereby and all other monies of the said society shall be appropriated and applied in the manner and for the purposes hereinbefore particularly mentioned.

In witness hereof the said parties have hereunto set their hands the day and year first above written.

Schedule hereinbefore referred to.

FIRST PART.

Names of members receiving or entitled to relief assenting to these presents.	No. of votes each entitled to.

SECOND PART.

Names of members receiving or entitled to relief whose claims are satisfied or for which provision has been made not assenting to these presents.	No. of votes each entitled to.

THIRD PART.

Names of all the other members, honorary and otherwise.	No. of votes each entitled to.

Here must follow the signature of the members.

FORM OF DECLARATION TO ACCOMPANY AGREEMENT FOR THE DISSOLUTION.

Register No. ——.

I, ——, of ——, one of the trustees [*or* —— of ——, three of the members and the secretary] of the —— society, held at ——, do solemnly and sincerely declare, that in the dissolution and determination of the said society, the provisions of the 13th section of the Act 18 & 19 Vict. c. 63, have been complied with, that is to say, that the said society has not been dissolved or determined without obtaining the votes of consent of five-sixths in value of the then existing members thereof, including the honorary members, ascertained in manner hereinafter mentioned, nor without the consent of all persons then receiving or then entitled to receive any relief, annuity, or other benefit from the funds thereof, testified under their hands individually and respectively, unless the claim of every such person has been first duly satisfied, or adequate provision made for satisfying such claim; and for the purpose of ascertaining the votes of such five-sixths in value of the numbers as aforesaid, every member has been allowed one vote, and an additional vote for every five years that he may have been a member, but no one member has had more than five votes in the whole; and the intended appropriation or division of the funds or other property has been fairly and distinctly stated in the agreement for dissolution, prior to such consent being given.

And I [or we] make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits;' and to make other Provisions for the Abolition of unnecessary Oaths."

Application to the Registrar for the Dissolution of a Society under 23 & 24 Vict. c. 58, s. 1.

We the undersigned, not being less in number than five-eighths of the whole body of the members of the friendly society called the —— Friendly Society, established at —— in the county of ——, under the provisions of the statutes then in force relating to Friendly Societies, and now held at ——, do hereby declare that the funds of such society are insufficient to meet the claims thereon, and that the grounds upon which such insufficiency can be proved are as follows:—

And we do hereby apply to you, the Registrar of Friendly Societies in England, to investigate the same, and to proceed in the manner directed by the Act, the 23 & 24 Vict. c. 58.

Rules and Orders for regulating the Practice of the County Courts, made under the 19 *&* 20 *Vict. c.* 108, *s.* 32, *and allowed by the Lord Chancellor the* 8*th December*, 1856.

The rules of practice and the forms now in use in the county courts in proceedings under the Charitable Trusts Act, shall, on and from the 1st day of January, 1857, cease to be used, and in lieu thereof the following shall, on and from such day, be the rules of practice and forms adapted and used in the said courts:—

186. In proceedings in the county courts under 15 & 16 Vict. c. 31, 17 & 18 Vict. c. 112, and 18 & 19 Vict. c. 63, a plaint shall be entered, and a summons shall be issued thereon, and the rules and practice of such courts shall be adopted with respect to such proceedings, so far as the same are applicable.

187. Where a defendant is a trustee, member of the general committee of management, treasurer, or other officer of an institution or society established under any Act mentioned in the last

rule, the summons shall be served in the mode, if any, prescribed by the Act, under which any such institution or society is established or regulated (*a*), and if no mode of service be thereby prescribed, then at the usual place of business of the institution or society, and if there be no such place of business, then according to the ordinary practice of the court.

The order of the Commissioners of the Treasury, dated November 21st, 1856, sanctioning a schedule of fees to be taken on certain proceedings in the county courts, directs that for proceeding under the Friendly Societies Act, 1855, and the Industrial and Provident Societies Act, 1852, the same fees shall be taken as upon the entry and hearing of a plaint in the county court, regard being had to the amount in dispute; and if the application to the court is not for the payment of money, the fees shall be estimated upon the amount of the sum of money or penalty which the applicant may state that he shall apply to the court to order the payment of, in default of the other party refusing or neglecting to comply with the order of the court.

The fees to be taken for the above proceedings are in no case to be estimated on more than £20.

Rules of Practice and Forms of Proceedings in the Sheriff's Court of the City of London, under the Friendly Societies Acts, 18 & 19 Vict. c. 63, and 21 & 22 Vict. c. 101; allowed the 8th August, 1859.

1. The judge shall from time to time appoint the days for holding courts for the hearing and determination of all matters then pending in court relating to Friendly Societies, and a notice of the day on which such court will be holden shall be affixed in some conspicuous place in the office of the clerk of the court, and whenever any day so appointed for holding the court shall be altered, notice of such alteration shall immediately be posted in like manner.

(*a*) See 21 & 22 Vict. c. 101, s. 7, *supra*, p. 67.

2. The judge may adjourn the court from time to time, or may refer any matter then pending in court, to be further considered and adjudicated upon at chambers.

3. The clerk of the court, the chief bailiff, and such other officers of the court as may be required, shall attend all the sittings of the court, and all adjournments thereof, and all sittings of the judge at chambers.

4. The clerk of the court and chief bailiff shall respectively keep books in the forms now used in the Sheriff's Court, which books shall be called "The Friendly Societies' Books," in which all proceedings taken and all orders made, in matters relating to Friendly Societies, and all fees taken and paid for, or in respect thereof, shall be duly entered, authenticated, and audited by the proper officers.

5. The person taking proceedings against any officer of a Friendly Society, in respect of a claim arising to him as a member thereof, or generally in relation to any Friendly Society, shall be deemed the plaintiff, and the person or persons, or society, summoned to answer his complaint, shall be deemed the defendant or defendants, and shall be so designated in the orders and proceedings of the court, but it shall be competent for the judge to direct in any case what person or officer of a society, or additional person, shall be made a party to the proceedings, either as plaintiff or as defendant, and thereupon if need be, and on such terms as to him shall seem fit, to adjourn the further hearing of the cause till such person or society be duly summoned to appear.

6. The enactments of the "London (City) Small Debts Act, 1852," shall so far as they relate to the costs of proceedings in the Sheriff's Court, and regulate the procedure thereof, be and be considered orders of court and rules of practice, as fully as if the same were herein *perbatim* repeated, and the rules of practice and orders for the time being in use in the court shall, subject to these orders, be adopted and used in reference to proceedings under the Friendly Societies Acts, so far as the same are applicable *mutatis mutandis*.

7. The plaintiff shall in all cases on entering his plaint, deliver at the office of the court as many copies of his demand or cause of complaint as there are defendants, and an additional copy to be filed with the proceedings. The demand or cause of complaint

shall be considered part of the summons, and as nearly as may be in the form given in the schedule No. 1.

8. On entering his plaint the plaintiff shall receive a plaint note, according to the form in the schedule No. 2, and a summons according to the prescribed form, No. 3, shall, thereupon, be issued, served, and proceeded upon as nearly as may be, consistently with these rules and orders, according to the ordinary practice of the court.

9. Where it is sought to make any defendant or co-defendant, sued as a trustee, member of the committee of management, treasurer, or other officer of a Friendly Society individually responsible, service of the summons, or of any order of the court shall be effected, either by delivering a copy thereof to the defendant or by leaving such copy for him at his usual place of business or abode, according to the ordinary practice of the court.

10. In any proceeding against a Friendly Society, or in which a Friendly Society is a co-defendant, service of the summons, or of any order of the court or the society, shall be effected either by delivering a copy thereof to the secretary or other officer who has been made the defendant in such proceeding, or by leaving such copy for him at his place of abode, or at the usual place of business of the society within the district of the court.

11. An order that a party shall do some act, or that in default of doing it he shall pay a certain sum of money, shall be in the form of the schedule No. 5, and upon proof being made to the satisfaction of the court or judge by affidavit or otherwise, that the said order has been duly served, and that a demand has been thereupon made by the party entitled to have such order obeyed, and that the same has not been obeyed within the time limited for the performance thereof, an order shall issue in the form in the schedule No. 6.

12. The plaint note, summons, and other proceedings, and all the formal documents used or filed in court, shall be printed, or fairly and plainly written on good paper of one uniform size, that is to say, on the blue paper usually called foolscap, without unnecessary alterations or interlineations, and shall in all cases be entitled in the court and of the cause, and be otherwise entitled and numbered according to the forms in the schedule. Documents not in accordance with this rule shall be rejected, and

any person failing to comply with it may be ordered to amend at his own cost, and if an adjournment be ordered, to pay in addition the costs of the day incurred by the other party or parties to the proceedings.

13. The forms in the schedule shall be used when applicable, but these forms may be varied and adapted to the circumstances of each particular case to which they do not directly apply.

And we do further order and direct that notice be put up in some conspicuous place in the court, and in the clerk's office, that in respect of proceedings in the said Sheriff's Court under the said Friendly Societies Acts, the same fees are to be taken as in proceedings within the ordinary jurisdiction of the said court under "The London (City) Small Debts Extension Act, 1852," regard being had to the amount, if any, claimed by the plaintiff; and that if the application to the court is not for the payment of money, the fees are to be estimated upon the amount of the sum of money or penalty which the plaintiff may state that he shall apply to the court to order the payment of, in default of the other party refusing or neglecting to comply with the order of court, the fees to be taken in no case being estimated at more than twenty pounds.

TABLE OF DISTRIBUTION OF PERSONAL ESTATE OF INTESTATES.

[22 & 23 Car. II. c. 10; 29 Car. II. c. 30.]

If the Intestate die, leaving	*His personal representatives take as follows:—*
Wife and child, or children.....	One-third to wife, rest to child or children; and if children are dead, then to their representatives (that is, their lineal descendants), except such child or children not heirs-at-law, who had estate by settlement or intestate, in his lifetime, equal to other shares.
Wife only.....	Half to wife, rest to next of kin in equal degrees to intestate, or their legal representatives.
No wife or child	All to next of kin and to their legal representatives.
Child, children, or representatives of them.	All to him, her, or them.
Children by two wives	Equally to all.
If no child, children, or representatives of them.	All to next of kin in equal degrees to intestate.
Child and grandchild	Half to child, half to grandchild, who takes by representation.
Husband	Whole to him.
Father, and brother or sister ...	Whole to father.
Mother, and brother or sister...	Whole to them equally.
Wife, mother, brother, sisters, and nieces.	Half to wife, residue to mother, brothers, sisters, and nieces.

If the Intestate die, leaving	*His personal representatives take as follows:—*
Wife, mother, nephews, and nieces.	Two-fourths to wife, one-fourth to mother, and other fourth to nephews and nieces.
Wife, brothers, or sisters, and mother.	Half to wife, (under statute of Car. II.) half to brothers or sisters, and mother.
Mother only.....	The whole (it being then out of the statute of 1 Jac. 2, c. 17). (*a*)
Wife and mother.....	Half to wife, half to mother.
Brother or sister of whole blood, and brother or sister of half blood.	Equally to both.
Posthumous brother or sister, and mother.	Equally to both.
Posthumous brother or sister, and brother or sister born in lifetime of father.	Equally to both.
Father's father, and mother's mother	Equally to both.
Uncle or aunt's children, and brother or sister's grandchildren.	Equally to all.
Grandmother, uncle, or aunt ...	All to grandmother.
Two aunts, nephew, and niece .	Equally to all.
Uncle and deceased uncle's child	All to uncle.
Uncle by mother's side, and deceased uncle or aunt's child.	All to uncle.
Nephew by brother, and nephew by half-sister.	Equally per head.
Brother or sister's nephew or nieces.	Where nephews and nieces, by families and not per head.
Nephew by deceased brother, and nephews and nieces by deceased sister.	Each in equal shares per head.

(*a*) By this statute, s. 17, "If after the death of a father, any of his children shall die intestate, without wife or children, in the lifetime of the mother, every brother and sister, and the representatives of them, shall have an equal share with her."

If the Intestate die, leaving	*His personal representatives take as follows:—*
Brother and grandfather	Whole to brother.
Brother's grandson, and brother or sister's daughter.	To daughter.
Brother and two aunts	To brother.
Brother and wife.....	Half to brother, half to wife.
Mother and brother	Equally.
Wife, mother and children of a deceased brother or sister.	Half to wife, a fourth to mother, and a fourth by families to deceased's brother or sister's children.
Wife, brother, or sister, and children of a deceased brother or sister.	Half to wife, one-fourth to brother or sister per head, one-fourth to deceased's brother or sister's children by families.
Brother or sister, and children of a deceased brother or sister	Half to brother or sister per head, half to children of deceased brother or sister by families.
Grandfather and brother	All to brother.

APPENDIX II.

CASES.

Jones *v.* Woollam, 5 Barn. & Ald. 769.—*Debt on a bond given to plaintiff as a treasurer of a Friendly Society. Plea, that the rules of the society had not been confirmed at the quarter sessions pursuant to* 33 *Geo.* 3, *c.* 54. Held, *upon demurrer, that the plea was bad, the bond being a good bond at common law.*

Debt on bond to the plaintiff, treasurer to a Friendly Society, &c. The condition set out on oyer was for the payment of a sum of money to the plaintiff, or his successor, treasurer of the Friendly Society or the executors or administrators of the plaintiff. Plea, that the bond was executed by the defendant to the plaintiff as treasurer of the society, and for the use and benefit of the society, and for no other cause or consideration whatever; and that the rules, orders, and regulations, by which the society was governed, had not been exhibited, confirmed, or filed, at the quarter sessions, pursuant to the statute 33 Geo. 3, c. 54. To this plea there was a general demurrer.

Storks, in support of the demurrer.

Barnewell, contra.

PER CURIAM.—If the plaintiff does not comply with the terms of the statute, he may not be entitled to the privileges conferred thereby; but as there is no express provision avoiding securities given to treasurers neglecting to register the rules, the bond is good at common law, and the plaintiff is entitled to the judgment of the court. Judgment for the plaintiff.

See also *Lomas* v. *Bradshaw*, 9 C. B. Rep. 620.

Battey and another *v.* Townrow, Easter Term, 53 Geo. 3; 4 Camp. 5.—*An action cannot be maintained by the trustees of a Benefit Society, elected under the new regulations agreed to by the members, unless these regulations have been confirmed by the quarter sessions, although the original rules of the society were enrolled in pursuance of* 33 *Geo.* 3, *c.* 54. Trover by the plaintiffs, as stewards and trustees of "The United Society of Bricklayers," for the books and insignia of the society.

This was a benefit society, the rules of which had been enrolled at the quarter sessions, pursuant to stat. 33 Geo. 3, c. 54. According to these rules, the society was to meet at four different public houses, and there were to be two stewards chosen together, who were to remain in office for six months, and then to be succeeded by two others, chosen in the same manner. It was afterwards agreed to meet only at one house, and that one steward should be chosen every three months, to remain in office for six months, so that there might not be two new stewards coming into office at the same time. These alterations of the rule were never submitted to the quarter sessions.

The books and insignia had been delivered to the defendant by two stewards, chosen under the original constitution; but the plaintiffs, who are now the acting stewards, had been chosen at different times, according to the new mode of election.

Garrow, A. G., contended that the plaintiffs were entitled to recover, by virtue of sect. 11 of 33 Geo. 3, c. 54, which vests the monies, goods, chattels, and effects of those societies in the trustees for the time being.

Lord ELLENBOROUGH.—The plaintiffs have no right to stand here, except by this Act of parliament; and the Act of parliament gives them no such right, unless they be lawfully elected to the office they now fill. But it appears they were elected contrary to law, and therefore they cannot maintain this action. The first section of the statute says, that "the rules, orders and regulations approved of, and confirmed by, the justices shall be binding upon all parties:" and the third section, which permits an alteration or repeal of these rules, orders, and regulations, with the concurrence of three-fourths of the members, provides that "such alteration or repeal shall be subject to the review of the justices, at the general quarter sessions of the peace, and shall be filed in manner therein directed; and that

no such rule, order, or regulation shall be binding, or have any force or effect until the same shall have been agreed to and confirmed by such justices, and filed as aforesaid." I cannot look, therefore, at the rule for altering the mode of electing the stewards; and it is admitted that the plaintiffs were not elected according to the original rule upon the subject, confirmed by the quarter sessions; therefore they are not the legal trustees of the society for the time being, and the effects sought to be recovered never vested in them. Plaintiffs nonsuited.

Reg. *v.* Godolphin, 8 Ad. & Ell. 338.—*A Friendly Society enrolled its rules in* 1794, *under stat.* 33 *Geo.* 3, *c.* 54. *In* 1804, *alterations were made in them, but, by a neglect, for which the society was not to blame the altered rules were never enrolled. They were, however, acted upon, and the original ones disused till* 1835, *when the omission to enrol was for the first time discovered. On motion for a* mandamus *to justice to hear the complaint of a member who had been expelled in* 1836: Held, 1st, *that the rules as altered could not legally be acted upon;* 2ndly, *that it was at least doubtful whether the original rules continued in force; and, consequently, that the court could not issue a* mandamus *to the justices, but must leave the applicant to his remedy in equity.*

A rule *nisi* had been obtained for a *mandamus* to Lord Godolphin and John Hailstone, two justices for Cambridge, commanding them to hear and determine the complaint of Thomas Lupson, against the Old Club Friendly Society, and the officers thereof, for having expelled him from the said society.

The society was established in 1755. Its rules were enrolled with the clerk of the peace for the county in 1794, and remain so enrolled and unaltered. These rules were acted upon till 1804, when they were altered and reprinted, but not enrolled, although it was understood and believed that it had been done. Under that impression the amended rules were acted upon until 1835, when it was discovered that the amended rules had never been enrolled; but no step was taken for enrolling them. In September, 1836, Lupson was expelled the society for alleged misconduct, and laid an information before the magistrates, who, it was con-

tended, had no jurisdiction, because the rules as amended in 1804, had, in effect, and in point of law, annulled the rules of 1794. The magistrates thought that, under these circumstances, they had not jurisdiction, and therefore they refused to adjudicate.

Kelly against the rule; *B. Andrews* and *W. H. Watson*, *contrâ*.

Lord DENMAN, C. J.—This was a rule for a *mandamus* to justices to issue a summons to the president, &c., of a Friendly Society, and to hear and determine the complaint of Thomas Lupson against the society for having expelled him. The cause shown was, that under the circumstances thereinafter stated, the Friendly Society in question was no longer within the provisions of stat. 33 Geo. 3, c. 54, and, consequently, that the magistrates had no jurisdiction. It appears that the society was established in 1755: in 1794, their rules were duly enrolled, and continued to be acted upon until 1804; at that time new rules were made, in many respects essentially different from the former; these were intended to be enrolled, but, in fact, were not; they were, however, acted upon till 1830, when further alterations were made, which, like the former, never have been enrolled. In both instances the omission to enrol appears to have been unintentional, and the misfortune rather than the fault of the society. The application to the magistrates is upon the footing that the rules enrolled in 1794 are still the governing rules of the society. In support of this the 3rd section of 33 Geo. 3, c. 54, is relied upon; and it is contended that, as the new rules by which the former enrolled rules were intended to be repealed have never been confirmed, or filed at sessions, they have no force or validity whatever; and it is thence inferred that the old rules are still in operation, and the society, in point of law, still governed by them, and so within the protection of the statute. As far as respects the new rules, it appears to us that the argument is well founded; whether the inference drawn as to the present binding power of the old rules be correctly drawn is the question. For anything, therefore, intended to be effected by the new rules, it is enough to say that, for want of confirmation and filing, they are at present inoperative; but as it must be taken upon these facts that by common consent of the then existing members the old rules were abandoned in 1804, and have practically had no operation since: and further, as it must be presumed, that in an

interval of thirty-three years many of the then existing members must have died, and many new members must have been added, who have become so upon the faith that the new rules were the governing rules of the society, and who may have been in entire ignorance of the old rules, it is by no means a clear consequence that the old rules can, at this moment, be resorted to as in existence, even for the purpose of holding the society under the statute. If they are binding rules for that purpose, they are so for all purposes; they may, for anything we know, provide different rates of contribution and relief from those now acted on, and may vary the rights of members in other material points; and there would arise the gross injustice, that members added since 1804 may find themselves now upon a totally different footing from that on which they understood themselves to stand when they joined the society. The only decided case exactly in point which was cited, is *Ex Parte Norrish*. In this case, it is true, the 3rd section does not appear to have been noticed; and in the view which we have taken it was not applicable, because there had been no attempt by new rules formally to alter or repeal the old ones. The Master of the Rolls decides upon the effect of a practical abandonment of the old rules, which is the difficulty that presses upon our minds in the way of issuing the *mandamus* prayed for.

We are aware of the extreme inconvenience of putting the claimant in the present case to seek his relief in a court of equity; but with the authority of *Ex parte Norrish* before us, and the serious doubts (to say no more) which we entertain whether the magistrates have the jurisdiction which the writ would command them to exercise, we should violate our well-established rules if we were to make the rule absolute; and, whatever may be the amount of the inconvenience in the particular case, we perhaps do that which is more than proportionably convenient in general, if by discharging the rule we cause it to be generally understood that these societies cannot depart from their established rules, or neglect to comply with the statute in the mode of altering or repealing them, without exposing their property to danger and themselves to great expense, loss, and inconvenience. Rule discharged.

Yeates *v.* Roberts, 3 Drewry, 171, affirmed on appeal, S. C. 7 De Gex, M. & G. 227.—*Disputes arising in a Friendly Society consisting of several lodges, whose rules directed the expulsion of any brother who should for a given time neglect to pay his dues, all the members of one of the lodges refused to pay, and, in consequence, the lodge was expelled; but the legality of their expulsion was in question. The remaining members afterwards duly registered, but under a new name, and appointed trustees:* Held, *that for the purpose of holding the funds of the society, the members so registering were the society, and that the trustees were entitled to delivery, by the grand master of the expelled lodge, of funds in his hands. This came on on a motion for decree.*

The bill was filed by certain members, who were trustees of the Birmingham District of the Original Royal Order of Odd Fellows, on behalf of themselves and all others interested in the funds of the said society, except the defendant. It was alleged that, in September, 1839, the society was formed for raising funds for the interment of members, or their wives, and for providing allowances during sickness.

That the members of such district lodge were all members of another society, called in the bill the original society, but the funds and property of the said district society were separate from those of the original society.

That in 1840 certain amended resolutions were made for the government of the original society, and the 46th of such regulations provided that the Birmingham lodge should become a district themselves, and that the district grand master should act in conjunction with the grand master of the order, and should abide by the rules and regulations as passed by a half-yearly committee on the 24th June, 1839; and by the 27th of those rules it was resolved, that if any brother should neglect to pay his arrears, with fines, on quarter night, he should be fined one shilling; if he did not pay by the next lodge night he should be suspended, and if he should not pay by the quarterly meeting following he should be expelled.

That the district society consisted of several lodges, who were in the habit of meeting at different taverns for transacting business, and the defendant was till his expulsion a member of a lodge of the district society called the Briton's Lion.

That on the 9th April, 1840, certain resolutions were passed

by the district society for its regulation and government, and by one of such resolutions the defendant, John Roberts, was appointed grand master, and another member was appointed deputy grand master, and one Silver corresponding secretary, and Southall treasurer.

That the affairs and business of the society were afterwards carried on under those resolutions, and considerable sums were paid by the members as their contributions.

It then contained various statements showing that divers monies so contributed by the members were paid into a Birmingham bank, and that after they amounted to certain considerable sums, deposit notes were given for them, and those notes, four in number, were placed in the hands of the defendant, to hold on behalf of the district society. In 1850 the members of the district society quarrelled, and it was then resolved that it should be registered pursuant to the 13 & 14 Vict. c. 115, as a Friendly Society, and it was registered accordingly in February, 1852. At the 49th quarterly meeting of the committee of the society on the 24th June, 1851, the members of the Briton's Lion lodge, including the defendant, refused to pay their contributions and fines, and they were, at the 50th quarterly meeting, September, 1851, expelled, the forms of the rules of the society having been duly followed in so expelling them. Roberts was then required by a deputation, appointed by a resolution of the committee, to give up the deposit notes, but he refused. The bill alleged that as to one of them for 60*l.*, he had afterwards got it cashed, and used the money. By the fourth of the rules, certified under the 13 & 14 Vict. it was provided that the trustees should be elected, and should be appointed in a particular manner, and the plaintiffs were duly appointed, and were such trustees. It alleged that as such, the deposit notes and other property of the society vested in them, and they were entitled to them on behalf of the society, and to sue for them; and it alleged that all the persons named as depositors in the notes, were willing to concur with the plaintiff in obtaining payment of the money, and having it duly invested. It prayed delivery up of the notes, for an account, and for an injunction, and, if necessary, for a receiver.

Mr. Selwyn and *Mr. Ostler*, for the plaintiffs, contended that the defendant had been regularly expelled. He disputed that;

but whether he was expelled or not, he had no right to hold the notes; they belonged to the trustees, the plaintiffs, who were regularly appointed.

Mr. Glasse and *Mr. Pownall*, for the defendant.—The plaintiffs are not, and do not pretend to be, the Birmingham district society. They have alleged that the original rules of the original society authorized an alteration of the rules of the district society. They have not shown that. Only one of the laws has been noticed, viz., the 27th; that only relates to any of the brothers of a lodge; it does not authorize the general committee to expel a lodge; it is a purely lodge duty, not a general one. Each lodge makes a return to the committee of the brothers whom it has expelled; that shows that understanding of the society as to the meaning of the rules.

The Briton's Lion lodge says the rules could not be altered, and the others say they can, and then what they do is to establish and register a new society, for the society registered neither bore the same name, nor did it include the seceding members. The rules so certified do not bind us. We are no parties to it; we are members of a different society, existing before the formation of the registered society. There was a society bound by the former rules that had not been dissolved; there had been a separation of members, but the funds belong to both, and, therefore, the plaintiffs cannot insist on holding them for only one set of members.

It is alleged by the bill that all the depositors are willing to concur with the plaintiffs. We prove that at least six of the depositors do not so concur, and require the notes to remain in the hands of the defendant.

Mr. Selwyn, in reply.—It is quite immaterial whether the defendant was expelled or not. The plaintiffs are the trustees, and the persons who ought to hold the notes; but the defendant was in fact duly expelled. The distinction between expelling the brothers of a lodge, and expelling a lodge, is idle; a lodge is no more than a number of brothers, and the committee simply expelled several brothers who were all in default, only they happened together to form a lodge.

As to the new name of the society, that is nothing. The barrister certifying the rules will not recognize a district society, and he changes the name, but he does not change the society

substantially. It consists of the same members, and the same officers, and the same ownership of property: it is to all intents the same society with a different name, that is all.

The VICE-CHANCELLOR.—The origin of these disputes arose out of an attempt at modifying the existing rules of the original district society. With respect to the power to alter those rules it is obvious that the society must have had a right to do so; such a right must be incident to the constitution of such a society. In consequence of these differences two of the lodges hesitated about making payments which the lodges were under the obligation to pay; and on this part of the case there is some conflict of evidence as to what took place, but I think the weight of evidence is in favour of what is stated by the bill, and the facts appear to be these:—That the persons representing one of these lodges ask the chairman of the committee, whether, if they decline to pay, they will be suspended or expelled? and the chairman replies,—you, from your experience of the rules, must well know that it will be so. Then, at one of the quarterly meetings, one of the lodges is suspended; and at a subsequent one, the lodge, not the individuals composing it in express terms, but the lodge is expelled, which is equivalent to the expulsion of all the members of the lodge; and it appears that not only that took place, but there was a certain amount of acquiescence by Roberts, who describes himself afterwards in a letter as an ex-member, and it does not appear that any other members disputed the expulsion. Then it appears that the original district society thought it expedient, after the expulsion of the Briton's Lion lodge, that it should be registered, and it was so registered. Now the body so registered was no doubt the body which had been the Birmingham district society of the original body; but when it came to be registered, Mr. Tidd Pratt, for some reason which I do not clearly understand, objected to portions of their title, and he cut off some words, and called them by a different title, which was, in fact, the title of the original whole body. But I cannot say that makes the society a different society; it is still the same society to which the funds in question belonged. In the case before Vice-Chancellor Wood, owing to some, probably similar ground of objection by Mr. Tidd Pratt, a part of the title was cut off, and the society was registered under a different name from that which it had before borne. It appears to me, then, that this is the same society as before; and it appears that in pursuance of its laws and regulations, and the Act of par-

liament, trustees have been appointed, and they are authorized to hold the funds which belong to that society. The only question then is, who are the component parts of that society? The defendant says, that in consequence of what has taken place, though he and the other members of his lodge have been expelled, that they are the original society, and that the others are the seceders. But that does not appear to me to be a just and reasonable view. I give no opinion on the legality of the expulsion; that is not now before me. The question is, is the body constituting the society represented by the plaintiffs or by the defendant? I think the first body is the society, and that the funds ought to be in the hands of the trustees appointed by that body. The plaintiffs are therefore entitled to a decree for the deposit of the notes, except that for 60*l.*, and as to that the defendant says he has placed it in other hands. I think that is a breach of trust, and he must replace the money. He will, of course, not lose it, as he will recover it from the parties with whom he has placed it. As to the costs, I think the defendant ought to have complied with the requisitions made to him by the plaintiffs, and therefore he must pay the costs.

This decision of the Vice-Chancellor was afterwards confirmed on appeal. Yeates *v.* Roberts, 7 De Gex, M. & G. 227. In giving judgment, Lord Justice Turner said: "It appears that this district society was divided in opinion, one part taking one view, and one another. The documents in question however were intrusted to the defendant for the purposes of the society, and then the society was registered, the consequence of which proceeding was, that according to the provisions of the Act of parliament, all the property of the society became vested in its trustees. The defendant insists that the registered society is not the district society, inasmuch as one of its lodges had been expelled. If, however, the lodge was lawfully expelled, there is an end of all question. And if it was not lawfully expelled, either of the members of it can enforce their restoration to the society, or the law is defective in not providing a remedy for that wrong. Still the property of the society must be delivered to the trustees, who are appointed by law to hold it. With respect to the alleged alterations, it appears to have been one in name only: I think therefore that the decree is right.

Hodges *v.* Wale, 2 Weekly Reporter, 65.—*The defendant was the surviving trustee of an association for the relief of orphans and widows. A schism took place among the members and a portion of them caused the society to be registered under the* 13 & 14 *Vict. c.* 115. *The defendant was removed from the office of trustee, by a meeting acting in compliance with the regulations prescribed by the rules, and new trustees appointed. The bill was filed by the plaintiffs, on behalf of themselves and all other persons interested in the trust fund, to compel the defendant to transfer stock standing in his name to the new trustees, and he resisted the application on the ground, amongst others, that he was a trustee, not only for the members of the registered society, but also for those subscribers of the old association who had been excluded from the new society. The court, looking at the original rules and the rules which had been certified,* held, *that the societies were identical, and that no person claiming to be* cestui que trusts *could object to the frame of the suit, the object of placing the funds in the hands of the proper trustee being common to all; that the power given to meetings by the Friendly Societies Act and the rules of appointing new trustees from time to time, included the power of removing trustees; that the Friendly Societies Act did not oust the jurisdiction of the Court of Chancery; that where a society had been registered under the Act,* Clough *v.* Radcliffe, 1 *De Gex & Sm.* 164, *does not apply; that the court would be unwilling to consider a society for the benefit of widows and orphans illegal under the* 39 *Geo.* 3, *c.* 79, *but would take the registrar's certificate to be conclusive as to the society being in conformity with, and therefore entitled to the benefit of, the* 21*st section of the* 13 & 14 *Vict. c.* 115.

The facts of this case sufficiently appear from the judgment.

Rolt, Q. C., and *Southgate* for the plaintiff.

Selwyn and *Turner* for the defendant.

Van Sandau v. *Moore*, 1 Russ. 570; *Clough* v. *Ratcliffe*, 1 De Gex & Sm. 176, were cited.

WOOD, V. C., said, the plaintiffs alleged that they were members of a certain society called "The Widows and Orphans' Fund Society;" that a fund had been raised which was called the Widows and Orphans' Fund; that such fund belonged to their society, and was held upon certain trusts, but had become vested

in the names of the defendants Boyce and Wale; that the society having been formerly unregistered had subsequently complied with the provisions of the Friendly Societies Act, 13 & 14 Vict. c. 115; and that in compliance with the certified rules new trustees had been appointed, and the plaintiffs were desirous of having the funds transferred to such new trustees. The defendants said, that before the society was registered it became divided by a schism, and that a portion only of the members adhered to it; that another portion, including themselves, were illegally expelled from it, and that a fragment only of the society procured itself to be registered, and that they (the defendants) had been removed simply by that portion so registered, and which did not represent the original society; that the body for whom they were trustees consisted of the original body, of whom the members of the registered society were only a portion, and that therefore there was no ground for transferring this fund to the alleged new trustees, as there was no privity between the parties. Other objections were taken, viz., that the society, as a whole, must be considered as an unregistered society, and that it could not be dealt with on the principles of *Clough* v. *Ratcliffe*, and *Van Sandau* v. *Moore*. That the defendants were trustees for a large body of persons, a great number of whom supported their view of the case, and objected to their removal; and that therefore this suit was improperly framed, there being persons having interests different from those represented by the plaintiffs. That the society was an illegal society under the 39 Geo. 3, c. 79, against corresponding societies. That if this was a duly registered society, the proper remedy would be that prescribed by 13 & 14 Vict. c. 115, and that the plaintiffs must bear the additional expense; and lastly, that the defendant Wale had not been duly removed, nor new trustees duly appointed, and no decree for taking the property away from him, and transferring it to the others, could be made. The real material point in issue was whether the two societies were one and the same. He (the V. C.) had gone through the original rules of 1848, and secondly, the rules certified by the barrister under the Friendly Societies Act. The question to be decided was, whether this society certified and registered was identical with the society of 1848? The first object was the relief of widows and orphans of Foresters in the London united district; and secondly, the fund was governed by the district

chief ranger and the sub-ranger, the district secretary, and three trustees. By the 25th of the original rules, representatives at quarterly meetings were to have the appointment of officers and trustees, with certain restrictions as to what representatives were expected to attend. It was admitted that quarterly meetings were still held. The 27th rule provided that the district officer should apply for enrolment of the society under the Friendly Societies Act, if practicable. Therefore, the very framers of the rules of the society contemplated that it ought to be enrolled, and no step taken with that object by the officers could be beyond their power. There was no necessity to try the question of the alleged illegality of the expulsion of a member. It was not said that the constitution of the body was broken up. Whatever had been done by the society, the existing government remained, and was capable of carrying into effect the objects of the society. The rules of the enrolled society appeared to be nearly if not quite the same as those of 1848; and judging from them, the registered society seemed to be the identical same body as the original society. There was no suggestion that the society had been dissolved, or was incapable of acting. If so, there was nothing to prevent the parties, supposing the society to be legal, from applying for its registration. It was the same continuing body—now registered —formerly unregistered.

The statute 13 & 14 Vict. c. 115, s. 4, directed that the rules should contain the manner of appointing trustees, and the certified rule provided that three trustees should be elected from time to time by the delegates. That must imply the power of a motion for the purpose of selecting new trustees. He (the V. C.) was satisfied on the evidence, that the plaintiffs had been duly appointed trustees of the fund. But it was said that a court of equity would refuse to interfere with intestine squabbles and disputes of such a society. If it had not been registered, he should have had little difficulty; but it was now protected by the Act. The question was, who was trustee of the fund, not whether there were intestine squabbles? With reference to the objection to the form of the suit, it must be assumed that the defendants were *cestui que trusts*. The governing body still remains. He was asked to take the fund from a person properly removed, and to place it in the hands of a trustee, properly appointed by the governing body; they all being *cestui que trusts* have a com-

mon interest in the fund being placed in the proper custody. The next objection was under the Act of 1793. He should have felt hesitation in applying that Act to a body, whose sole object was to relieve widows and orphans, merely because they had a "court," and a "district," and were associated with a body called Foresters. If so, the Methodist body and numerous associations for scientific and other purposes might fall within the words of this Act. But the legislature had left it to the barrister to approve of the rules, and that having been done the society could not be held for this purpose to be illegal. The next objection was that this remedy in equity was improper, as the Friendly Societies Act gave a less expensive remedy. But that Act in several sections contemplates suits in equity, and the remedy there given to obtain a transfer of stock was very inadequate. It was enough to say that there was nothing in it to oust the jurisdiction of this court. The last objection had been already considered. In making a decree for the transfer of the fund, the decision would in no way affect the suspension of the defendant. The rights of the *cestui que trusts* would have to be determined according to whatever the rules might be. Finding a society in existence which had power to appoint trustees, and finding that trustees had been duly appointed, the only order that it would be necessary for the court to make would be a direction that the funds of the society be transferred to the persons properly appointed; and the defendant Wale having occasioned the difficulty, must pay the costs.

Dewhurst and others *v.* Clarkson, 3 E. & B. 195.— *Where an amendment of the rules of a Friendly Society has received the barrister's certificate, under stat.* 4 *&* 5 *Will.* 4, *c.* 40, *s.* 4, *such amendment is valid, though there has been no resolution of the society in compliance with the statute,* 10 *Geo.* 4, *c.* 56, *s.* 9, *or with the rules of the society incorporating that section.*—Per Lord Campbell, Coleridge, and Wightman, Justices; *dissentiente,* Erle, J. *The rules of a society directed that three trustees should be appointed, of whom one should be the treasurer, in*

whose name the funds of the society should be invested, and that the treasurer should invest the unappropriated stock exceeding 50l. as the board of management should direct, pursuant to stat. 13 *&* 14 *Vict. c.* 115. *Three trustees were elected, but a fourth person was elected treasurer:* Held, *that the three trustees could not sue a former treasurer for the balance in his hands under these rules, and that they had no title to do so under stat.* 10 *Geo.* 4, *c.* 56, *or stat.* 13 *&* 14 *Vict. c.* 115, *which were prior to the rules taking effect.*

On the trial for this action, which was for money had and received by the defendant to the use of the society, it appeared that the society had been established as early as 1825, and had, till 1853, been governed by a set of rules, duly certified. By one of the rules a treasurer was to be appointed, and by another rule provision was made for making alterations, and which rule incorporated the 9th section of 10 Geo. 4, c. 56. Under these rules the defendant was appointed treasurer, and nothing had occurred to put an end to his tenure of such office, unless the circumstances after mentioned had that effect. In 1853 a set of new rules was transmitted to the barrister, with an affidavit that, in making of them, the provisions of the Act under which the rules of the society were enrolled had been duly complied with. The new rules were duly certified, but it afterwards appeared that they had been drawn up and transmitted without any such meeting having been held as was prescribed by the old rules and stat. 10 Geo. 4, c. 56, s. 9. By the new rules three trustees were to be appointed, one of whom should be treasurer, in whose names the funds of the society were to be invested. And whenever the unappropriated stock amounted to above 50*l.* the same was to be invested by the treasurer as a majority of the board of management should direct, and pursuant to 13 & 14 Vict. c. 115. After the enrolment of the new rules, the three plaintiffs were elected trustees, according to the regulations therein prescribed, except that no one of them was treasurer, but that another person, named Thomas Grune was elected treasurer. It was admitted on the part of the defendant that he had received the money claimed on behalf of the society; but it was contended for him that he continued treasurer, and that the plaintiffs were not legally appointed trustees. For the plaintiffs it was admitted that the action must fail, unless the plaintiffs could establish their title under the new rules; and it was further admitted that the new rules had not

been made in conformity with the old rules; but it was contended that the registrar's certificate was conclusive as to the validity of the new rules, and that it was not open to object that they were not regularly adopted in the manner prescribed in the old rules. The learned judge was of opinion that the certificate was not conclusive, and he directed a verdict for the defendant; but it was afterwards arranged that the plaintiffs should be nonsuited, with leave reserved to enter a verdict for them. For the defendant it was further objected that the plaintiffs were not entitled to sue, even supposing the new rules valid, inasmuch as the 12th of those rules directed that one of the three trustees should be treasurer, and none of the rules vested the money in a trustee not being treasurer. It was agreed that the defendant should be allowed to raise this point upon showing cause against the rule to be moved for. In Michaelmas Term, 1853, *Atherton* obtained a rule for setting aside the nonsuit and entering a verdict for plaintiffs.

Against the rule cause was shown by *Watson*, Q. C., and *Rew*; *Atherton* and *Cowling, contrà*.

Lord CAMPBELL, C. J.—My brothers *Coleridge* and *Wightman* concur in the opinion which I am about to pronounce—my brother *Erle* differs from us. During the argument I entertained considerable doubt respecting the point on which the rule was granted, but, after looking into the statutes on which it depends, I think that the objection taken to the plaintiff's right to sue was not open to defendant, stat. 4 & 5 Will. 4, c. 40, s. 4, having enacted that all rules, alterations, and amendments thereof, from the time when the same shall be certified by the said barrister to whom they were submitted, shall be binding on the several members and officers of the said society, and all other persons having interest therein. The intention of the legislature seems to have been to give the like effect to the certificate of the barrister under stat. 4 & 5 Will. 4, c. 40, s. 4, as was given to the confirmation by the sessions under stat. 10 Geo. 4, c. 56, s. 8. I cannot doubt that when rules had been so confirmed and made binding, a member could not have questioned the regularity of the manner in which they were made. Under stat. 4 & 5 Will. 4, c. 40, s. 4, a new process for confirming the rules is given, but the object still was to make them binding. If notwithstanding the precaution taken, any rule has been certified by the barrister which was not regularly made, a remedy would be open to a member who

disapproves of it by moving its repeal or modification, and if there be a majority of the society who agree with him the wrong would be redressed, The defendant's counsel admit that the certified rule is *primâ facie* valid; but great mischief might arise if this were only a presumption to be rebutted, as then in every case where a rule is to be enforced evidence might, without notice, be given of some alleged irregularity in making it. I cannot doubt that it would be for the general benefit of the Friendly Society that the rules, when certified, should be considered binding till repealed and altered; and the language used by the legislature seems to me fairly to bear this construction. I therefore think that the nonsuit cannot be supported on this ground.

ERLE, J. (after reviewing all the enactments at length).—The words of the section, the purview of the statute, the provisions of other statutes *in pari materiâ*, and expediency, lead me to the conclusion that the certificate of the barrister does not create a rule or amendment, but fixes the time when it becomes operative, and that the defendant is entitled to succeed.

Watson and *Rew*.—The defendant is still entitled to keep the money until his successor is appointed. No good successor to him has been appointed under the new rules.

Atherton and *Crowling, contrà*.—The 12th rule of the society refers to the 13 & 14 Vict. c. 115, ss. 12, 13, and introduces so much of them as relates to the funds of the society. The treasurer, therefore, is a mere banker of the society; and the trustees, though not entitled to keep the money, have that legal interest in it which entitles them to sue and maintain the action.

Lord CAMPBELL, C. J.—I think the nonsuit ought to stand, the plaintiffs having made out no right to sue. We must now assume that the new rules are binding—but they have not been pursued. Instead of making one of the three trustees a treasurer, three trustees are appointed, and a fourth person is made treasurer. Supposing the election of trustees to be good, what right have they to claim the money? The learned counsel reverted to the Acts of Parliament, but they are superseded by the new rules in this respect. And under stat. 13 & 14 Vict. c. 115, money does not, before it is invested, vest in trustees of whom no one is treasurer.

COLERIDGE, J.—I am of the same opinion. The plaintiffs

were, I think, well appointed trustees; till then the money was clearly in the treasurer. Then, how does it come to the trustees? One suggestion rather surprised me—that the simple election of the trustees gave them the funds of the society. In all the Friendly Societies Acts you find clauses directing the money to be invested in the names of the trustees: how could their mere appointment give them what is in other hands? Then, as to the new Rule 12, the treasurer is to invest, if the sum in his hands exceed 50*l*. Till the investment, therefore, the money must be in his hands. The provisions of stat. 10 Geo. 4, c. 56, do not interfere with this view. According to them the money is to be in the hands of a single person, called indifferently treasurer or trustee. The essence of the provision is, that the person who is really treasurer has the custody of the money. Then reliance is placed on stat. 13 & 14 Vict. c. 115, but the new rules would supersede the provisions there—though, indeed, I think that sect. 13, compared with sect. 12, gives the treasurer the custody of the money till it is invested.

WIGHTMAN, J., and ERLE, J., were of the same opinion,

Rule discharged.

Cartridge *v.* Griffiths, 1 Barn. & Ald. 57.—*Declaration by B., a treasurer of a Friendly Society, on a bond to A., then being treasurer; plea, non est factum; bond given in evidence was to A., without stating him to be treasurer to the society.* Held, *that B. was entitled to recover.* Debt on bond. The declaration was in the following form: William Cartridge, treasurer of the Friendly Society of Loyal Britons, complains that defendant on the 22nd September, 1810, by his writing, obligatory, &c., acknowledged himself to be bound unto one William Farley (then being treasurer of the said society) in the sum of £ , and the said defendant had not paid the said sum of money to William Farley while he was treasurer as aforesaid, or to the plaintiff since he has become treasurer, or to any other person on behalf of the said society. Plea, *non est factum.* At the trial before *Burrough*, J., at the last spring assizes for the county of Gloucester, the bond produced in evidence was a

common money bond from the defendant to William Farley, *without stating him to be treasurer of the society;* but it was proved that this was a security belonging to the society; that Farley, at the date was treasurer, and that the plaintiff had succeeded him in that office. It was objected that this was a variance, and the learned judge, considering the point doubtful, nonsuited the plaintiff, with leave to move to enter a verdict; and a rule *nisi* having been obtained in last Easter Term by *Jervis*, cause was now shown by *Jessop*.

Lord ELLENBOROUGH, C. J.—The declaration does not state that the bond was given to Farley as treasurer, but only then being treasurer. The effects of the society vest by law in the treasurer, and the operation of the statute is to transfer the security which vested in Farley to the plaintiff, who is alleged and proved to be the present treasurer. I cannot, therefore, discover any ground for saying that there is any mistake. The plaintiff says that the defendant is bound to him, and he is bound.

BAYLEY, J.—The only issue is, did the defendant execute such a bond as is stated in the declaration? Now the bond in the declaration is stated to be a bond to William Farley, *then being treasurer;* the allegation, Then being Treasurer, is no part of the bond, but an extrinsic fact.

ABBOTT and HOLROYD, Js., concurred. Rule absolute.

Sharpe and another *v.* Warren, 6 Price, 131.—*Assumpsit for money had and received may be maintained against one who had been a member of a benefit club, for money intrusted to his keeping by the rest of the society in the name of the officers properly appointed for managing their affairs under the articles.—If by the articles the society are empowered to appoint a treasurer, an appointment of two persons to be treasurers is within the power. It is not an objection to such an action that the defendant having been a member at the time when the promise is laid to have been made in the declaration, was partner or tenant in common, and therefore could not be sued in assumpsit for money had and received.—An Act of Parliament giving a sum-*

mary remedy to persons against defaulters, though in terms apparently prescribing such remedy, is accumulative, and does not take away the previous right to sue by action at law. Storks had obtained a rule calling on the plaintiffs to show cause why the verdict obtained for them on the trial of this cause at the summer assizes for Bedfordshire, before Mr. Baron *Graham*, should not be set aside on three technical objections arising on the facts in evidence.

The parties had all been members of a benefit club, under articles which had been duly enrolled. The plaintiffs had originally acted as stewards of the club, and the defendant as auditor. This action (*assumpsit* for money had and received) was brought by the plaintiffs to recover a sum of money constituting the funds of the society, which had been placed in the hands of the defendant by them for safe custody, and which the defendant had applied to his own use, and refused to pay over.

For the purpose of the present suit the plaintiffs were, previous to its commencement, appointed treasurers to the society, to enable them to sue under the 33 Geo. 3, c. 54, s. 4.

Under these circumstances it was objected, *first*, that the Act of parliament had not authorized the appointment of two treasurers, and therefore the plaintiffs were not in a situation to sue the defendant on the behalf of the society, by the second article (*a*) of these rules, which authorizes the appointment of a treasurer.

Secondly, that the defendant himself being a member of the society, was a partner and a tenant in common with the other members when the right of action (if any) accrued, and therefore could not be sued by them in the form of action. *Forster* v. *Allanson* (*b*).

And *thirdly*, that the Act of parliament, having by the 8th section expressly provided a remedy in cases of this sort, where money constituting part of the general fund was withheld by an officer of the society to whom it had been intrusted, and who should refuse to account, by petition to the Court of Chancery or this court, had precluded the right of proceeding by action at

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(*a*) That article authorized the club to appoint a person to be auditor, and also a treasurer, if necessary.

(*b*) 2 Durnf. & East, 479.

law, whereby the money of the club would be unnecessarily squandered.

The learned judge reserved the points, and gave liberty to move.

Frere, Serjt., and *West*, showed cause against the rule.

Storks and *Dover* were then heard in support of the rule.

GRAHAM, Baron.—We are of opinion that there is no solid foundation for either of the objections taken to this verdict. As to that of the defendant being a partner, I think that he was, under the particular circumstances of this case, bound by his promise, independently of his going out of the society, and running away with the box, and that this action may be maintained against him, even though he might be considered a tenant in common. If one tenant in common oust the others, an action of trespass lies. So if tenants in common appoint one bailiff or receiver, by the old law they might have an action of account against him. I am therefore of opinion, that in a case of this sort *indebitatus assumpsit* would lie. His carrying away the money and leaving the society, makes him liable to them, as if he were not himself a member of the society, and it might be recovered as money had and received. The defendant had placed himself out of the protection of his situation in the society by his conduct in withdrawing under the circumstances, and he had no longer any further interest in common with them.

But this case is, besides, clearly within the 11th section of the Act of parliament. It is one which the Act contemplated and provides against, removing all question as to the supposed partnership in the money, by enacting "that the property of the society shall vest in the proper officer for all purposes of action and suit in anywise touching the same, and that such actions may be brought in the name of such officer."

The objection of two treasurers having been appointed is equally untenable. The appointment, though inaccurately worded, is in effect an appointment of two persons to be treasurer, and on that *Curle's* case is precisely in point.

The last objection could only have weight if the statute had been imperative on the officers of the society, in directing them to proceed by the extraordinary mode of petition only; but as it has not done so, we must take it the legislature gave the society the more summary remedy in addition to what they might otherwise have had.

WOOD, Baron.—I think neither of these objections can hold.

As to the appointment of the treasurer, the Act empowers the members to appoint two persons to the office, if they think fit; the 4th section expressly enacts that such societies shall and may elect and appoint such persons (in the plural) into the *office of treasurer*, &c., and to elect and appoint others in the room of those who should die, and that is still made more clear by the subsequent language of the section, which speaks of the treasurers in the plural, which would otherwise be nonsense.

The question then is, whether the rule of the society abridged the power given to them by the Act. The object of the rule was merely to enable the members for the sake of convenience, to appoint a treasurer at a monthly instead of a yearly meeting. They use the word "treasurers" as meaning the office of treasurer, and in that sense it would be absurd to suppose that they meant to abridge by the rule their own power, as given by the statute.

There is, therefore, no pretence for the objection: both by the statute and by their rule they had a power to appoint two or more persons to the office, and that is what they have in fact done.

The next objection is, the defendant being a partner. Now without reverting to the terms of the Act of parliament, I think that enough appears from the facts of this case to enable the plaintiffs to maintain the present action; for the promise laid in the declaration must be implied from the circumstances of the defendant's having the money of the society in his hands after he had left the club, and when he had consequently ceased to be a partner. I may, however, ground myself on the words of the Act, for the 11th section enacts, "that the monies, &c., of the society should be vested in the treasurer or treasurers (or other officers) for the use and benefit of the society, and in the succeeding officers for all the purposes of action and suit, and that it shall for those purposes be taken to be the property of such officers, who are authorized to bring actions in their own names."

As to the specific remedy given by the statute, it is clear that that does not preclude the plaintiffs from suing the defendant in a court of law. That does not preclude the plaintiffs of any pre-existing right. It gives merely an additional remedy, and all the

remedies are concurrent, and the plaintiffs may choose whichever is most suitable to their case. I am of opinion, therefore, that these persons were properly appointed treasurers, and that they may maintain this present action in their own name, and that notwithstanding they have been given a more summary remedy by the Act of parliament.

I therefore think there is nothing in either of the objections which have been taken, that ought to be suffered to disturb this verdict.

GARROW, Baron.—I have much satisfaction in being supported by my brothers in the opinion which I have formed of the weakness of the objections which have been taken to this verdict, and which are admitted to be merely technical, and not consistent with the justice of the case. If there was anything held out to the neighbourhood by the language of the rules of this society which might tend to mislead, we might hold them strictly to the terms of the articles; but they propose to obviate the inconvenience of a treasurer dying, leaving a long interval before another could be appointed, by altering the time from six months to one. They alter their rule accordingly, and the court of quarter sessions sanctions it. If these poor people could have foreseen this discussion, they would most probably strike out the *s*, and then the language of the rule would have brought their officers within *Auditor Curle's* case.

As to the other point of the partnership, the answer is, that the defendant is not sued as a member, but as a mere defaulter, accountable to the society for their money in his hands.

I have, therefore, no doubt that the plaintiffs had a right to sue the defendant in this action. He must be taken to have promised to pay over the money intrusted to his keeping whenever it should be demanded; and the person entitled to make such demand is the treasurer for the time being, or, in other words, the person or persons holding the office of treasurer. I say nothing of the conduct of the defendant, although that is a circumstance in this case which ought not to be overlooked in considering his liability to the plaintiff in the present action.

PER CURIAM.—Rule discharged.

Timms *v.* Williams, 3 Ad. & El. N. S. 413.—*Proceedings to recover the amount of a promissory note made payable to the treasurer for the time being of a loan society under stat.* 5 *&* 6 *Will.* 4, *c.* 23, *must be taken by the treasurer in office when such proceedings are to be commenced, not the party who was treasurer when the note was made. Such treasurer cannot bring an action upon the note, but must proceed by complaint before a justice under stat.* 5 *&* 6 *Will.* 4, *c.* 23, *s.* 8.

Assumpsit, plaintiff describing himself as "the treasurer for the time being of a loan society called 'The City of London Loan Society,' established in pursuance of the statute," &c., (5 & 6 Will. 4, c. 23). The declaration stated the making of a promissory note "to the treasurer for the time being of the said society," and averred the nonpayment of the same.

W. H. Watson, for the defendant.—First, the plaintiff could not recover upon this note at common law. It is payable "to the treasurer for the time being;" that must be the person who was treasurer when the note was made; and unless by legislative enactment, the right of action could not pass from one treasurer to another without indorsement. There is nothing to attach the promise in law on which the action must be founded to the person of the plaintiff. But the proper course of proceeding is before justices, and for this purpose the treasurer is the party authorized by statute 5 & 6 Will. 4, c. 23. The intention was to give the numerous contributors to these institutions a short and cheap remedy; and in *Crisp* v. *Bunbury*, 8 Bing. 394, under the Act for regulation of savings banks, 9 Geo. 4, c. 92, s. 45, the Court of Common Pleas taking into consideration the objects of the legislature (which were like those proposed by the present Act), held that the jurisdiction of the superior courts might be ousted without express words for that purpose; *Tindal*, C. J., saying that even words which appeared permissive only might have that effect if the object and intent of the statute manifestly required it. (Lord *Denman*, C. J., mentioned *Rex* v. *Mildenhall Savings Bank*, 6 Ad. & Ell. 952.)

Cowling, *contra*.

Lord Denman, C. J.—The great question here is, whether the treasurer can maintain this action to recover money due to the society upon a loan; because stat. 5 & 6 Will. 4, c. 23, s. 8, directs that notes given to secure such loans shall be payable to "the

treasurer or clerk for the time being." Then sect. 8 gives a mode by which the treasurer for the time being may put such note in force when the society wish to recover the sum secured; a magistrate being invested with full power to adjudicate upon the complaint. The remedy by this course, is complete; and we are not to suppose that justices will fail to perform the duty which the law requires of them. And in the case of savings banks, so here, as it appears to me, the legislature has thought it useful to withhold the power of instituting expensive suits in the superior courts, and to appoint a domestic forum to settle those small disputes which a society of this kind is likely to be engaged in.

PATTESON, J.—The words of stat. 5 & 6 Will. 4, c. 23, s. 8, making notes payable to the "treasurer" "for the time being," are certainly ambigious; and I at first thought they meant the person who was clerk or treasurer at the time of giving the note.

But I think that is not so. The meaning is, that the note shall be payable to the officer and his successor. If, therefore, the plaintiff had been treasurer at the time when the note was made, sect. 8 would not enable him to sue on that account. Then, do the words imply that the person who happens to be treasurer when default is made may bring an action? If so, then, wherever an Act of parliament made notes payable to the officer of a society for the time being, special clauses, enabling the officer for the time being to sue and be sued, and directing that actions should not abate by a change in the person, and all similar provisions would be rendered unnecessary. But we have never held anything equivalent to this. If the legislature meant that one person should sue on a security given to another it would expressly provide so. But here express provision is made for another mode of proceeding, and the remedy must be sought by that. Not that the jurisdiction of the superior court is thus taken away; that jurisdiction never arises, for the treasurer has no power at law to sue upon the note given to his predecessor. It is not necessary to determine whether or not the trustees could have maintained an action on the note. The property may be in them, but it does not follow that they have the right of action.

COLERIDGE, J.—It is enough for us in this case to determine that the present plaintiff cannot sue, there being no words which

expressly give the power as in other statutes. And in the present statute a particular mode of redress is pointed out, the most proper and equitable one for such cases. It is suggested that justices might refuse to act, and the court might not feel authorized to issue a *mandamus*; but these are cases so unlikely to occur that it could hardly be necessary to provide for them.

Judgment for defendant.

In re the Eclipse Mutual Benefit Association, 1 Kay (App.)30.—*Under the Friendly Societies Acts, after a society within their provision has been dissolved, though its affairs are not wound up, the Court of Chancery has no jurisdiction to appoint a person to convey, or assure property in the possession of a trustee who refuses to concur with his co-trustees in realising it, for the purpose of having it distributed among the members.*

This was the petition of John Newton and John Hard, stating that they together with one William Idle, were duly appointed trustees of the Eclipse Mutual Benefit Association, which was a Friendly Society duly enrolled, and that a sum of 25*l*., with some interest thereon, was standing in their joint names in the Finsbury Savings Bank.

That dissensions having arisen in the said society, it was agreed that it should be dissolved, and a plan of dissolution, stating the intended appropriation and division of the funds of the said society, as directed by the said Acts of parliament, was adopted by the said members, to the effect, that the committee of management should sell the effects of the said society, and appropriate the stocks and funds for the benefit of the members; every member to receive his proportionate, or equal division of the funds according to the number of monthly contributions he had paid. The petition stated that the petitioners had been, and were, desirous to wind up the affairs of the said society, in pursuance of the foregoing plan of dissolution, but that the said William Idle, although often requested to join the petitioners, for the purpose of with-

drawing the above-mentioned fund, had refused so todo, and prayed that the court would be pleased to appoint such person as to the court should seem meet, on behalf, and in the name of, the said William Idle, to transfer the aforesaid fund to the petitioners. The affidavit of the petitioner John Newton verified the above facts, and stated that the society was dissolved in June, 1852, with the votes of consent of five-sixths of the existing members, testified under their hands.

Mr. Roxburgh, for the respondents, took a preliminary objection to this petition, that, as it appeared upon the face of the petition that the society was dissolved, the court had no jurisdiction, under the Friendly Societies Acts, to grant the prayer of the petition, but that the application must be by a suit in Chancery, in the usual way.

Mr. Doyle, for the petition, referred to sect. 15 of 10 Geo. 4, c. 56, which provides, "that when, and so often as, any person seised or possessed of any lands, tenements, or hereditaments, or other property, or any estate or interest therein as a trustee of any such society, ... shall refuse to convey or otherwise assure" the same "to the person duly nominated as trustee of the society in their stead," the courts might appoint some person to convey to such trustee.

The proper remedy was by petition, and the society, though in course of being dissolved, must be considered to exist, for the purpose of being wound up, until that was completely done.

The VICE-CHANCELLOR, Sir W. Page Wood, seemed at first inclined to take this view, but, having considered the sections of the Act, said that he was afraid he could not help the petitioners, and must therefore dismiss the petition, but without costs.

Payne, *Ex parte*, 5 Dowl. & L.; 13 Jur. 634.—*By the rules of a building society, duly enrolled under the* 6 *&* 7 *Will.* 4, *c.* 32, *it was provided that all matters of dispute should be referred to two of Her Majesty's justices of the peace in pursuance of the provisions of the* 10 *Geo.* 4, *c.* 56, *s.* 27: Held, *on motion for a* mandamus *to the judge of one of the county courts, to proceed and hear a plaint levied by one of the members against the officer of the society, that the jurisdiction of the county court did not extend to any disputes arising between the members of any such societies.*

This was a rule calling upon a judge of the county court of

Bedfordshire to show cause why a *mandamus* should not issue, commanding him to hear a plaint in a cause of Payne *v.* Garratt. The following were the facts as they appeared from the affidavit. The plaintiff Payne was a member of a certain building society, duly enrolled under the 6 & 7 Will. 4, c. 32, and the defendant Garratt was a trustee or officer of the said society. Among the rules was one (rule 25), that all matters in dispute be referred to two of Her Majesty's justices of the peace, according to the provisions of the 10 Geo. 4, c. 56, s. 27. In consequence of certain disputes that had arisen, Payne withdrew from the society, and then levied a plaint in the county court for his share, which was under 20*l.* The judge, considering that he had no jurisdiction to entertain the matter, refused to hear the plaint, whereupon the present rule was obtained.

WIGHTMAN, J.—Upon a rule for a *mandamus* to the judge of the county court to proceed with this action, which was brought by a member of a building society, within the provisions of the 6 & 7 Will. 4, c. 32 against an officer of that society, it was contended that by sect. 4 of that statute, incorporating the provisions of the 10 Geo. 4, c. 56, ss. 27, 28, and 29, and by the 25th rule of this society, directing a reference of all disputes to justices of the peace, the right to bring this action was taken away; and I am of opinion that this is so. By these sections, provision is directed to be made by the rules specifying whether disputes shall be referred to justices or to arbitrators, and the decision upon such reference is made final. These sections and this rule, providing for a cheap, simple, and speedy decision, oust the jurisdiction of the ordinary tribunals. (*Crisp* v. *Bunbury*, *Timms* v. *Williams*, 2 Q. B. Rep. 413.) In *Cutbill* v. *Kingdom*, the action was held maintainable, because the rule there relating to reference did not comprise the matter of that action, but by the exception the rule was recognized. The 9 & 10 Vict. c. 95, s. 58, does not operate to take away the effect of these statutes from county courts, or revive a power of bringing actions there, which had been taken away from all courts generally. The rule, therefore, must be discharged. Rule discharged.

Reeves and another v. White, 17 Q. B. Rep. 997, 16 Justice of the Peace, 118.—*To a declaration by the trustees of a building society on the covenants of a mortgage deed, given to them by a subscriber, to secure the sum appropriated and lent to him by the society, the defendant pleaded that arbitrators had been appointed pursuant to the statutes in that behalf and the rules of the society; that the claims in the declaration were matters in dispute between him and the society within the meaning of the statute and the rules, and that he had always been ready and willing, and still offered, to refer the claims to arbitrators. The plaintiff replied, specially traversing the appointment of arbitrators, and stating, by way of inducement, that the first meeting of the society took place long before the defendant became a member; that by accident, mistake, and oversight, arbitrators had not then been appointed, and that at the time of the accruing of the causes of action and of the commencement of the suit there were no arbitrators:* Held, *that the plea was an answer to the declaration, and the replication an answer to the plea.*

A second plea set up the defence, that by the rules the society was empowered, under the circumstances of the case, to appoint a person to collect the rents and profits of the mortgagee's premises, and reimburse the society its costs, and pay the principal and the interest due; that the rents and profits were sufficient; that the defendant had always been willing to allow the rents and profits to be so collected and paid over, or to collect them himself and pay them over, yet the directors had not appointed any one or the defendant himself to collect and pay over, as they might and ought to have done according to the true intent and meaning of the rules and statutes. On demurrer, Held, *that the society was entitled, at its option, to take the remedy suggested by the plea, or the remedy on the deed.*

Quære, *whether it would have been a good plea to the declaration to have stated that the defendant was ready and willing to refer the matters in difference to arbitration, according to the rules and statutes; that he had requested the directors to do what was necessary for that purpose, and that they had neglected to do so?*

In every case in which the remedy by arbitration under the 10 Geo. 4, *c.* 56, *may be pursued, it is the sole remedy.*

Lord CAMPBELL, C. J.—In this case we are of opinion, upon

the demurrer to the replication to the first plea, there ought to be judgment for the plaintiffs. The declaration seems to us sufficient to show a right of action in the trustees of the building and investment association under the 6 & 7 Will. 4, c. 32, s. 4, and 10 Geo. 4, c. 56, s. 21. We are inclined to think the first plea is good. After setting out the 33rd rule of the society for referring the claims and cause of action in the declaration mentioned as matters of dispute between the society and the members thereof, and that the arbitrators were duly appointed according to the said rule, and continued to be arbitrators thenceforth until the commencement of this suit, it proceeds to state that the defendant has always been, and still is, ready and willing to refer the said matters in difference to the said arbitrators, according to the rule and the statute, and that the directors were not willing to do so. A mere covenant between the parties to refer to arbitration will not oust a court of law of their jurisdiction; but the question is, whether an arbitrator being duly appointed, the legislature has not enacted that all matters of difference between the society and the members shall be referred to the said arbitrator, and finally adjudicated on by him to the exclusion of any action in a court of law. In *Ex parte Payne*, 5 D. & L. 679, *Erle*, J., sitting in the Bail Court, after full argument and great deliberation, put this construction on the 27th section of 10 Geo. 4, c. 56; considering it to be the express intention of the legislature to protect such societies and their members, generally persons of an inferior rank of life with small wages, from the vexation and ruin which might be brought on them in courts of law, and to provide for them a domestic forum by which their differences might be speedily decided, and at a small expense. The same construction was put on a similar statute by the Court of Common Pleas in *Crisp* v. *Bunbury*, 8 Bing. 394; in which *Tindal*, C. J., impressively pointed out the oppressive consequences which would follow to such societies and their members if this power of referring to arbitration were held to be cumulative only. The case of *Morrison* v. *Glover*, 4 Ex. R. 430, holding that an action might be maintained by the trustees of a building society, proceeded on the ground that there part of the plaintiff's claim was not matter in dispute between him and the defendant as a member; and in *Doe dem. Morrison* v. *Glover*, 12 Q. B. 102, it was held merely that an ejectment for the benefit of the building society might be main-

tained in the name of John Doe upon the demise of the person in whom the legal estate vested. The other authorities relied on do not show that in all cases the society has the option either to refer or to bring an action, and do not outweigh *Ex parte Payne* and *Crisp* v. *Bunbury;* and on an attentive consideration of the words of the Act of parliament, it appears to us to be not merely permissive, but to be enacted that where there may be, there must be a reference to the arbitrators. Supposing the first plea to be sufficient, we are of opinion that it is sufficiently answered by the replication, which traverses the allegation that the arbitrators were appointed according to the rules of the society and the Act of parliament, and in pointing the traverse shows that the arbitrator never had been appointed by the society, and that when those matters in difference arose for which the action is brought, a reference to arbitration was impossible. The defendant's counsel contended, that it was not competent to the society to take advantage of their own wrong, and that it could not be allowed to aver that arbitrators were not appointed. We are not called upon to decide what the effect would have been if the defendant, in this plea, instead of alleging that arbitrators had been appointed, had merely alleged that he was ready and willing to refer the matters in difference to arbitration according to the rule and the statute, and that he had requested in vain the directors to do what was necessary for that purpose. But we entertain no doubt that where he has alleged that the arbitrators were appointed, to whom the matter in difference might have been referred, a traverse of that allegation which is made material is a good answer to the plea. We are likewise of opinion that there must be judgment for the plaintiffs on the demurrer to the second plea, founded on the eighteenth and nineteenth rules of the society, though the directors might have a remedy by appointing a receiver of the rents, and exercising their power of sale.

Judgment for the plaintiffs.

Grinham and another v. Card. 7 Exch. Rep. 833.—*Where, by the rules of a Friendly Society, disputes between members and*

the trustees may be referred to the arbitration of a certain number of the committee, a dispute which affects the interests of all the individual members of the society, arising between some of its members, who are also members of the committee, and the trustees, where the question is not one which necessarily requires that recourse should be had to a court of equity, such disputes cannot be referred to the judge of the county court, but must be referred to other members of the committee.

Where a dispute arose between two of the members of the committee of a Friendly Society and the trustees, touching the distribution of a fund in the hands of the latter, and, by one of the rules of the society, it was ordered that disputes were to be referred to such members of the committee as should not be personally interested in the matter: Held, *that the judge of the county court has no jurisdiction in such case, and the court granted a prohibition against further proceedings in a plaint issued out of the court over which he presided.*

Honeyman had obtained a rule, calling on the plaintiffs in a plaint of *Grinham* v. *Card*, trustees of the "Frant Friendly Society," and the judge of the county court of Kent, to show cause why a writ of prohibition should not issue to him to stay all further proceedings in the said plaint. It appeared from the affidavits that the plaintiffs were two of the members of the committee of the Frant Friendly Society, and that the defendants were the trustees of that body. The particulars of the plaintiffs' demand in the said plaint were as follows:—"For you to show "cause why you did not pay over the money or reserved fund of "the Frant Friendly Society, in your hands or power, as trustees "of the said society, as required and prescribed by a rule of the "said society, duly made and passed by the said society, and cer-"tified on the 10th of July, 1850." It further appeared that the society was originally established in 1836, when, among other rules for its governance, the 32nd rule, which was duly enrolled and certified by John Tidd Pratt, Esq., was as follows:—"That if any "difference or dispute shall arise between any of the members of "this society, not being officers, touching any matter or thing "relating to this society, it shall be referred to the committee for "their decision; but if any dispute or difference shall arise between "any officers of this society, or between any other member and an "officer or officers, it shall be first referred to the committee, or

" such of them as shall not be personally interested therein, and " if the decision of such committee shall not be satisfactory to all " parties concerned, then reference shall be made to arbitrators, " pursuant to the 10 Geo. 4, c. 56, s. 27." The "reserved fund" was not established until the year 1839, and it consisted of the accumulated subscriptions of the honorary members, and its application was regulated by a rule (38), which was framed in that year. In 1847, this rule was altered, and the application of the reserved fund was so altered, and the payments were directed to be made pursuant to a certain scale. This rule provided, " that " if any difference or dispute shall arise touching this fund or the " construction of this rule, the same shall be referred to arbitra- " tion in the manner specified by the rule of this society." On the 10th of July, 1850, this rule was also expunged, and the following rule was made and duly certified. This rule, after directing that rule 38 be expunged, proceeded as follows:—" And " that the money now in the bank in the names of the trustees, " and other monies that shall or may be due to the reserved fund, " up to the time of this alteration coming into operation, shall " be divided among the members according to the years they have " been members since the formation of the benevolent fund, with " the exception of a reserved fund to the amount of 5*s*. a member, " to be deducted and placed in the Tunbridge Wells Savings " Bank, by the treasurer, in the name of the Frant Friendly " Society; and that all monies received after this alteration " coming into operation shall be placed to one fund, to be called " the General Fund of the Frant Friendly Society."

It further appeared that in April 1851, a meeting of the members of the society was convened to consider whether five-sixths were in favour of a division of the reserved fund, and that the proposal for such division was put to the vote at the meeting, and was negatived; and that in consequence thereof, the trustees refused to distribute the fund, lest they might be held responsible for so doing. It was contended before the judge of the county court, on the part of the defendants, that he had no jurisdiction in the case, but that, under the 13 & 14 Vict. c. 115, s. 22, and the 32nd rule of the society, which rule expressly referred to the 10 Geo. 4, c. 56, s. 27, the plaintiffs ought to have referred the question to the arbitration of the committee. The judge, however, was of opinion that the rule of the 10th of July, which had been

duly certified, gave him jurisdiction over the plaint, and he accordingly gave judgment in favour of the plaintiffs, whereupon the present rule was obtained.

Hawkins, showed cause against the rule.

ALDERSON, B.—This is not the case in which the parties must have had recourse to a court of equity, and therefore they ought to refer it to arbitration. It is not a dispute between the members of the committee and the trustees, but between two of the members of the society, as members merely, and the trustees. The investigation could not be made without affecting each of the members, the plaintiffs therefore are not interested in the question as committee-men, but as members. The dispute might be referred to some of the other members of the committee under the 32nd rule, so as to exclude the plaintiffs.

PER CURIAM.—The rule must be absolute.

Reg. v. Grant, 13 Jur. 1026; 14 Q. B. Rep. 43.—*By sect.* 27 *of* 11 *Geo.* 4, *c.* 56, *relating to Friendly Societies, an award made according to the true purport and meaning of the rules of the Friendly Society shall be final and binding. The* 26*th rule of the Leeds Philanthropic Society declared that all matters in dispute between the society and any individual member should be referred to arbitration, that the arbitrators should hear evidence on both sides, and that their decision should be binding on all parties and final. By sect.* 7 *of stat.* 4 *&* 5 *Will.* 4, *c.* 40, *jurisdiction is given to justices of the peace, in case of neglect or refusal by the arbitrators to make an award.*

P. J., a member of the Leeds Philanthropic Society, who had been expelled for an alleged breach of one of the rules of the society, applied to arbitrators duly appointed according to the statute, and they made an award that P. J. be expelled from the society. P. J., treating the award as void and null, applied to justices for the county, who made an order, in which they adjudged that the arbitrators had neglected and refused to hear evidence on both sides, touching the matter in dispute, and to make their award therein, and that P. J. be reinstalled in the

society. Upon a rule for quashing the order, Held, *first, that the adjudication by the justices that the arbitrators had neglected and refused to make an award, was a decision upon one of the preliminaries necessary to their jurisdiction, and therefore was not conclusive. Secondly, that as the affidavits contained sufficient to show that the justices were warranted in considering it proved that the arbitrators had wrongfully refused to hear evidence on the part of P. J., there was no final and binding award; and therefore the justices had jurisdiction to make the order.*

This was a rule calling upon the prosecutors to show cause why a certain order made by the justices in and for the West Riding of the county of York, dated the 11th January, 1847, whereby the presidents, stewards, and members of a certain Friendly Society, called the "Leeds Philanthropic Society," duly established and holden at Leeds, in the West Riding, under stat. 10 Geo. 4, c. 56, were adjudged and ordered forthwith to reinstate Philemon Jacques in the said society, and readmit him to all the benefits arising therefrom accordingly, should not be quashed for insufficiency.

Lord DENMAN, C. J., in delivering the judgment of the court, said—On a motion to quash an order of justices brought up by *certiorari*, it appeared by the affidavits that the complainant had applied to arbitrators only appointed according to the statute; that they had, in fact, made an award between the complainant and the Friendly Society; that the complainant, treating the award as void and null, had then applied to justices, who made the order in question, and therein declared that the arbitrators had neglected and omitted to make any award, this being the condition on which their jurisdiction to take cognizance of the dispute depends.

Upon these facts the question has been, whether the statement in the order that the arbitrators had neglected and omitted to make an award was conclusive. It is clear that the decision of a tribunal lawfully constituted, upon a question properly brought before it respecting a matter within its jurisdiction, is not open to review by *certiorari; Reg.* v. *Bolton*, 1 Q. B. 66; 5 Jur. 1154; but the decision of persons assuming to be a tribunal, that they are lawfully constituted, is open to review. In the present case, the justices are in the nature of two arbitrators, the refe-

rence being conditional upon the first arbitrators neglecting or omitting to award; and their decision that this condition existed is a decision upon one of the preliminaries necessary for constituting them a lawful tribunal for this matter. It is therefore not conclusive within the principle laid down in *Reg.* v. *Bolton*, 1 Q. B. 69; 5 Jur. 1154, but falls within the latter of the two limitations of it there mentioned, namely, where the charge is really insufficient, but is misstated in drawing up the proceedings, so that they appear regular. In such case it is competent to the defendant to show by affidavit what the real charge was, and if that shows that the magistrates ought never to have begun the inquiry, the order is to be quashed.

We have therefore in the present case found it our duty to inquire whether the statement in the order respecting the neglect and refusal of the arbitrators to make an award was true. The admitted facts are, that arbitrators were duly appointed, and that the parties attended before them, and that an instrument purporting to be an award was made. The disputed fact is, whether the arbitrators refused wrongfully to hear any evidence on the part of the complainant; and a point of law arises, whether, if that be so, the instrument was an award. As to the fact, the affidavits on behalf of the complainant contain sufficient to show that the justices may have been well warranted in considering it proved; and we presume that they were right, as this is not an appeal from them. Then the point arises, did this fact warrant the statement made in the order? in other words, does the order correctly state the legal effect of the facts?

The 10 Geo. 4, c. 56, s. 27, enacts, that an award made according to the true purport and meaning of the rules of the society shall be final and binding. The rule of the society in question, relating to arbitration, declares that the arbitrators shall hear evidence on both sides, and their decision, binding on all parties, shall be final. Upon this statement there is good reason for saying, that arbitrators who refused to hear the evidence of one side did not make an award according to the true meaning of the rules of this society, and therefore did not make an award final and binding within the terms and intent of the 10 Geo. 4, c. 56, s. 27.

The 4 & 5 Will. 4, c. 40, s. 7, giving jurisdiction to the justices in case of the neglect or refusal of the arbitrators to make an

award, recites the 10 Geo. 4, c. 56, s. 27, and intends an award final and binding within the meaning of that statute. It seems to follow, that the justices have jurisdiction where the award is not in this sense final and binding, and we have therefore come to the conclusion that they had jurisdiction in the case now before us. Rule discharged.

Ex parte *Long*, 3 Weekly Reporter, 18.— ***Where a dispute between a Friendly Society and one of its members has been referred to arbitration under sect. 7 of 4 & 5 Will. 4, c. 40, the award of the arbitrators is final, and a magistrate has no jurisdiction to hear the dispute, unless it can be shown that such an award is a nullity.***

C. Hutton moved for a rule calling on David Jardine, Esq., one of the metropolitan police magistrates, to show cause why he should not hear and determine a dispute between Amy Long, the widow of one Charles Long, and a Friendly Society, called "The United Kingdom Benefit Society."

It appears by the affidavits that the husband of the applicant became a member of the society in 1841, and that in October, 1853, he fell ill and was declared on the sick fund of the society, and continued to receive assistance from that fund until the month of February, 1854, when he received a letter from the secretary, informing him that his name was erased from the list of the members for breach of the 11th rule of the society, which was to the effect, that any member found transacting business for profit or reward, during the time he was receiving assistance from the sick fund of the society, should be excluded from the society. Charles Long died on the 25th April, 1854, and the claim made by his widow, notwithstanding his expulsion, had been referred to arbitration, in accordance with the rules of the society. The arbitrators had decided against her claim, and the present application was under 4 & 5 Will. 4, c. 40, s. 7, to compel the magistrate to hear and determine the dispute.

C. Hutton.—It is submitted that the award of the arbitrators is bad, as having been made contrary to the rules of the society; there was no evidence of working for profit or reward. The

offence charged was that during the time he was receiving aid he had wheeled a barrow for his wife, containing linen, some 400 yards. [Lord *Campbell*, C. J.—There was then some evidence; it was for the arbitrators to consider its value.] He was not summoned before the society to answer for his breach of its rules, and this objection when taken before the arbitrators was not allowed by them. [Lord *Campbell*, C. J.—If they refuse to hear the objection that the deceased had not been summoned, you might impugn the award on that refusal, but it appears they heard the objection, and refused to allow it. They did not refuse to hear the evidence on it.] That is so. [Lord *Campbell*, C. J.—It was for them to determine whether or not they would allow the objection.] The award was made corruptly; one of the arbitrators was dead. [Lord *Campbell*, C. J.—There are no facts in the affidavits to warrant that conclusion. We must suppose the arbitration to have been conducted properly. You have to show that the award was a nullity. It is not a nullity because it was against the weight of evidence. You must show that the deceased was not properly expelled—that he died a member of the society.] In *Regina* v. *Grant*, 14 Q. B. 43, an award not made according to the rules of the society was held to be void. [*Coleridge*, J.—There the award was a nullity, because the arbitrators only heard one side and refused to hear the other. Lord *Campbell*, C. J.—You must show that the award here is a nullity to give the magistrate jurisdiction to hear the case.] He also referred to *Regina* v. *Evans*, 3 Ell. & B. 363.

Lord CAMPBELL, C. J.—I regret that no ground has been made for our interference in this case. It is a hard case, but hard cases, it is said, make bad laws. The magistrate can have no jurisdiction where the award is not a nullity. The arbitrators did not refuse to hear the evidence; they heard it, and it was for them to give what weight to it they thought right. The strongest point urged in support of the application was as to the objection having been overruled that the deceased had not been heard before expulsion. Still, the arbitrators did hear the objection, and in spite of the objection, decided that the expulsion was regular. If *mala fides* on the part of any of the arbitrators had been satisfactorily shown, the award might have been treated as a nullity; but this charge of *mala fides* was not supported by the affidavits.

COLERIDGE, J.—I am of the same opinion. As to the argument of "hardship," employed in support of the application, it is one that cannot be listened to and ought not to be put forward. Parties who become members of these societies agree that their disputes shall be settled by arbitration, and when an award is made against them they must submit to the decision. The only question in this case is, has an award been made? To give the magistrates jurisdiction some defect, making the award a nullity, or that it has been decided with *mala fides*, must be clearly shown. Now, an award has been made, and there is not sufficient evidence of *mala fides*. We cannot listen to mere opinions as stated in the affidavits in support of such a charge. It is admitted that the objection that the deceased was not summoned was heard. The arbitrators may have decided wrongly in not giving weigh to it, but still they heard it; the most that can be said is, that they came to a wrong conclusion. The case of *Regina* v. *Grant* is perfectly consistent with our decision. There one allegation was, that the arbitrators had neglected to make an award at all, that they had wrongfully refused to hear evidence, and that therefore the instrument was no award at all. The court determined, and rightly, that it was no award. That is not at all like the present case. Here the arbitrators have heard the evidence; and however mistaken they may have been in their decision, still they heard the case, and their award is valid.

WIGHTMAN, J.—The jurisdiction of the justices only arises in case the arbitrators neglect or refuse to make an award. Here they did make an award, but it is said that the arbitration was so conducted that their award is a nullity. It is said, first, that they decided wrongly; that the member expelled had not worked for profit and reward; and, secondly, that they overruled one of the rules of the society. As to the first objection they are to exercise their own judgment, and they have done so. As to the second, they are to determine whether the rule was infringed. They may have come to a wrong conclusion as to these points, but they have determined them to the best of their judgment. There is nothing to show *mala fides* on their parts. Their award cannot be treated as a nullity, and that is the only ground for granting this application.

ERLE, J.—I am of the same opinion. The question here is, "have the arbitrators made an award?" Nothing is clearer than

the distinction between "no award" and a "mistaken award." If persons select a mode of settling their disputes, it is important that they should be bound by it; therefore, although by coming to our present conclusion, we may inflict an apparent hardship on the party complaining, yet the effect of our decision is advantageous to these societies. The case of *Regina* v. *Grant* has been properly distinguished from the present.

Rule refused.

Reg. *v.* Evans, 3 E. & B. 363; 18 Justice of the Peace, 247. —*D. having been expelled by a Friendly Society, gave notice to refer the dispute to arbitration, and signed an agreement to be bound by the award of five out of nine persons, who after his expulsion had been appointed arbitrators in the room of nine others appointed at the first meeting, of the society, of which nine two had become incapable of acting, and the other seven had been alleged, but this was disputed, to have left the place. The award confirmed the expulsion of D. Afterwards the society gave notice of a meeting for re-hearing D.'s case; but D. refused to refer it again, and took out a summons before justices, who made an order for his re-admission*: Held, *that the award of the arbitrators was binding, and that the order of the justices was made without jurisdiction.*

On the 12th of April, 1852, David Davies was expelled from the society called the Bangor Rechabites, for an alleged breach of the rules. He disputed the lawfulness of his expulsion, and served a notice (September 8), requesting the society to refer the difference between him and the society to arbitration, as provided by the rules of the society. At the first meeting of the society, some years ago, nine arbitrators were appointed, of whom two had become incapable of acting, and the other seven were alleged in the affidavits in support of the rule to have become disqualified by quitting Bangor; but in the affidavits against the rule, it was alleged that they were living in Bangor, and willing to act. On the 12th June, 1852, nine fresh arbitrators were appointed by the society, and it did not appear that this second set of arbitrators was appointed fraudulently, or that the society had any sinister views in their appointment. The notice of Davies to refer

the dispute was served on the 8th of September following. On the 6th of October, a meeting of the society was held, at which the committee and Davies attended. Six out of nine of the new arbitrators were nominated, from which the five were to be selected who were to award upon Davies's case. Davies refused to proceed with the selection, and to have his case referred, unless he was allowed to put aside one particular person of the six arbitrators. This the committee allowed him to do, and the five arbitrators were then chosen, one being an attorney, at whose suggestion an agreement in writing, simply to refer and to be bound by the award, was drawn up and signed by Davies and Rowland Evans, the president, on behalf of the society. By the rules the arbitrators were to be persons not interested in the society. Davies alleged in his affidavit that he was unaware, at the time of his referring his case, of the objection to the appointment of the second set of arbitrators, or that they had not been properly appointed. The arbitrators made their award, affirming the decision of the society as to Davies's expulsion. Then it appeared that there was a notice of a meeting on February 25, 1853, to proceed to the re-hearing of Davies's case, and that the second set of arbitrators attended it, but Davies refused to refer his case to any of those persons. Davies then on the 10th of March, 1853, took out a summons before the justices. The hearing took place on the 15th of March, when the attorney to the society objected that the magistrates had no jurisdiction. The case was then adjourned to March 28, 1853, when five justices attended, and it was decided to hear the complaint; whereupon the attorney for the society, being dissatisfied with this decision, advised his clients to withdraw from the case, which they did: whereupon Davies proceeded to make his complaint, and the justices made an order, requiring the president of the said society forthwith to reinstate the said David Davies into the society, and adjudging that, in default of such reinstatement, the said president of the said society should forthwith after such default pay to the said David Davies the sum of £50.

A rule *nisi* for quashing the order having been granted, cause was shown against the rule by *Bramwell*, Q.C., and *Willes*.

Cowling and *Hodgson*, *contrà*, were not called on.

Lord CAMPBELL, C. J.—I am of opinion that this rule should be made absolute. The *mala fides* has been on the part of Davies.

If the magistrates had decided that the appointment of the second set of arbitrators was fraudulent, they would have had jurisdiction. But they have not done so. They had no jurisdiction in this case, because there was an award made by arbitrators, whose appointment Davies had no power to contest. It would lead to the most mischievous consequences to say that the appointment of a second set of arbitrators, *bonâ fide* appointed in the belief that the Act authorized their appointment, and in the belief that the former arbitrators were dead or absent from the country, or had refused to act, could at any time afterwards be inquired into, and that, if it turned out that there had been any misapprehension, all that they had done was to become void. I am of opinion, that the second set of arbitrators was *bonâ fide* appointed, that in this case they had jurisdiction to act, and that their award was binding, and that after that Davies had no right to appeal to the justices.

COLERIDGE, J.—The question is, whether, according to section 27 of the Act, and the facts in this case, the justices had jurisdiction. They had no jurisdiction unless the society had refused to comply with the application to have the dispute settled by arbitration within forty days (4 & 5 Will. 4, c. 40, s. 7), or unless there had been a neglect or refusal to make an award. When the parties were before the justices there was *de facto* an award made by the arbitrators, and there was nothing on the face to show that it was null. The burden was on Davies to show that there was no award. I agree with the argument that the award made must be a binding one on both parties. (The learned judge then recapitulated the material facts.) One of the five arbitrators chosen was an attorney, and he, supposing that all the proceedings might not be strictly regular, thought it right that an agreement should be drawn up. When these facts appear, the necessary conclusion is, that Davies was estopped from contesting the award, unless it is shown that he was deceived, and that fraud was resorted to in bringing about the award as against him. I think that this was a perfectly good award; and it would be most mischievous if it could be re-opened under the circumstances, especially in societies of this kind.

WIGHTMAN, J.—I am of opinion that the facts and circum-

stances that appear on these affidavits do not warrant Davies in contesting the jurisdiction of the arbitrators.

Rule absolute.

Rex *v.* Soper and Camfield, 3 Barn. & Cr. 857.—Held, *under* 35 *Geo.* 3, *c.* 54, *s.* 15, *that the jurisdiction of the magistrates was confined strictly to the subject matter of the complaint, and, therefore, where it appeared that a party had complained to the justices that he had been deprived of relief to which he was entitled, and the justices awarded not only that the steward should give him such relief, but also that the party should be continued a member of the society, it was held that the latter part of the order was illegal, inasmuch as the expulsion of the party was no part of the complaint.*

This was an indictment for not obeying an order of justices. It appeared that at the trial before *Alexander*, C. B., at the summer assizes for the county of Kent, 1824, the only proof of the complaint made by Margetts, the member, to the magistrates was contained in the order which was produced in evidence by the prosecutor; that order recited that Margetts, a free member of the society, complained upon his oath before the justices, that he, Margetts, had, for the space of sixteen days, to wit, between, &c., been sick and infirm, and had been unable to follow his trade, and that Soper and Camfield, the stewards of the society, refused to pay him £1 0*s.* 6*d.*, the arrears of allowance to which he was entitled as a sick member of the society. The order then required the issue of a summons requiring the stewards to appear before them on the day of the date of the order, to answer to the said complaint; and upon their appearance, the justices had proceeded to hear and determine the matter of the said complaint according to the true purport and meaning of the rules, orders, and regulations of the society, and according to the statute; and that upon such hearing they were satisfied that Margetts had not infringed any of the said rules, orders, and regulations, and that the sum of sixteen shillings was then due to him from the said society for the arrears of his allowance as a sick member thereof, and they therefore ordered Soper and Camfield forthwith to pay to Margetts the sum of sixteen shillings, and also the further sum of

eleven shillings for the costs which Margetts had been put unto, by reason of the stewards refusing to pay him the said allowance; and they further ordered that Margetts should be continued a member of the society. It was objected for the defendants, that that part of the order which directed that Margetts should be continued a member of the society was illegal and void, because the justices had power only by the 33 Geo. 3, c. 54, to adjudicate upon the matter of complaint before them, and it appeared by the recital in the order that the expulsion was no part of the matter of complaint. The lord chief baron over-ruled the objection, and the defendants Soper and Camfield were found guilty. A rule *nisi* was obtained in last Michaelmas term upon the objection taken at the trial, and also upon the ground that the allegations in the indictment were not supported by the evidence, inasmuch as the allegations in the indictment were that Margetts had made complaint to the justices, first, that he had been expelled the society, and, secondly, that he had been deprived of the relief which he was entitled to from the stewards of the society for the time being, and the proof was that he had only complained of his having been deprived of relief.

Campbell was now heard against the rule, and *C. Law* in support of it.

Bayley, J.—I am of opinion that the rule for a new trial ought to be made absolute. It is our duty to look at the indictment, to see whether the charge contained in it was supported by the proof given at the trial; if it was not, then the defendants were entitled to an acquittal. The indictment states that Margetts had been expelled the society, and had been deprived of certain relief to which he was entitled; and that thinking himself, and being aggrieved thereby, he made complaint thereof to two justices, and took his oath before them, and deposed to the truth of the said complaint. The indictment therefore alleges a complaint to have been made involving two propositions, viz., first, that Margetts had been expelled the society; and, secondly, that he had been deprived of relief. The proof was, that the complaint made was confined to one of those propositions, viz., that Margetts had been deprived of relief; and the indictment does not charge any disobedience of the order of the justices in that respect. It then proceeds to state that the stewards were summoned, and that they personally appeared and answered to and showed cause against

the complaint and matters required of them in the said summons, and that the justices afterwards made their order that Margetts should be continued a member of the society. Now that allegation imports that the stewards were summoned to answer and did answer the complaint, consisting of two branches mentioned in the former part of the indictment. It appears, however, by the proof contained in the recital of the order, that they were summoned to answer one ground of complaint only. I therefore think that these allegations were not made out in proof, and that the defendants were entitled to an acquittal on that ground. The indictment then states that the justices proceeded to order that Margetts should be continued a member of the society. A question therefore arises whether the order was a valid order; because if it was not, the defendants were not bound to obey it, and consequently are not indictable for disobeying it. The statute 33 Geo. 3, c. 54, s. 15, enacts, that if any member of the society shall think himself aggrieved by any thing done by any such society or person acting under them, two justices, upon complaint upon oath of such person, may summon the presidents or stewards of the society, or any one of them, if the complaint be made against the society collectively, and the justices are to hear and determine in a summary way the matter of such complaint, and to make such order therein as to them shall seem just. The statute, therefore, confines the jurisdiction of the magistrates to the subject matter of the complaint before them. They cannot therefore adjudicate upon any matter not comprehended in the complaint made on oath before them. Now, in this case, the only matter of complaint before the justices was, that Margetts had been deprived of the relief to which he was entitled. The justices have not only determined that matter of complaint, but they have further adjudicated that Margetts should be continued a member of the society, and that was not a matter brought before them on oath. Upon the ground, therefore, first, that the allegations in the indictment were not supported by the proof, and, secondly, that that part of the order which directs that Margetts should be continued a member of the society was illegal, I think that the defendants were entitled to an acquittal, and that the rule for a new trial must therefore be made absolute.

HOLROYD, J.—I also think that the rule for a new trial ought to be made absolute, because the allegations in the indictment

were not supported by the evidence given at the trial, and the verdict was therefore wrong, and the defendants were entitled to an acquittal. I also think that the justices had power only to adjudicate upon the subject matter of complaint brought before them. If the complaint had embraced the two propositions which the indictment supposes it to have embraced, the justices would have been guilty of no excess of jurisdiction; but here the expulsion of Margetts was no part of the complaint before the magistrates, and the defendants were not summoned to answer for having expelled him. I therefore think that the magistrates acted unlawfully when they ordered that Margetts should be continued a member of the society, and that the defendants were not bound to obey that part of the order. Upon the ground, therefore, that the allegations in the indictment were not supported by proof, and that the defendants were not bound by law to obey the order made by the magistrates, I think that there ought to have been an acquittal, and consequently that the rule for a new trial ought to be made absolute.

LITTLEDALE, J., concurred. Rule absolute.

Poore *v.* Dennett and Others, 18 Justice of the Peace, 215. —*A Benefit Society was established under the Friendly Societies Act, for providing funds against sickness and old age, and also a burial fund for deceased members. Members of five years' standing were to have* 5*l. for their burial, and those of ten years and upwards,* 10*l. All the members were of seven years' standing, and one member upwards of thirty years. More than nine-tenths in number of the members agreed to dissolve the society, and distribute the funds equally among all the members, without regard to seniority of membership:* Held, *that this agreement was binding upon the whole number, and the distribution was directed accordingly.*

This was a bill filed by the plaintiff, Joseph Poore, a member of the "Isle of Wight Brotherly Society," seeking an injunction to restrain the defendants, the trustees and treasurer of the society, from distributing or realizing or converting into money, for the purposes of distribution, the funds and property of the society,

until it should be duly dissolved in accordance with the rules. The society was established in the Isle of Wight in the year 1785, and had continued to exist up to the present time, regulated and governed by certain rules, which, in the month of May, 1848, were duly certified to be in conformity with the provisions of the Friendly Societies Act, the 10 Geo. 4, c. 56, as amended by the 4 & 5 Will. 4, c. 40. The society was established for the purpose of raising a fund by subscription among its members for their mutual relief in sickness, old age, or infirmity, and for providing for the payment of a sum of money in connection with the funeral of deceased members. The amount for funeral expenses was 5*l.* for members of five years' standing, and 10*l.* for those of ten years and upwards. By the fourth rule it was provided, "that every member should subscribe monthly 1*s.* 4*d.* for the purpose of supporting the sick, and likewise 4*d.* per month towards defraying the funeral expenses; and for the comfort and convenience of the society he should subscribe an additional 4*d.* per month, for the purpose of defraying all incidental expenses, fees, &c." By the 22nd rule it was provided, "And this society shall not be dissolved on any pretence whatever, so long as the intents and purposes of the rules remain to be carried into effect, or without the consent of nine-tenths of the members thereof." At a meeting of the members of the society held on the 4th of April, 1853, a resolution was come to, and entered in the society's books, to the following effect: —"It was decided that the said society should be broke up this night, and not to be considered a society any longer; the officers to prepare everything as soon as possible, to share whatever there may be among the members, to call in all monies actually due to the society for its final settlement." This was unanimously carried and signed, and no one signed against it. It appeared that at this meeting, out of eighty-nine members of the society, fifty-eight only were present, and, of these, fifty-six only voted in favour of the dissolution. In this state of things, the trustees having proceeded, in accordance with the resolution, to dispose of and distribute the funds, the plaintiff, who had been a member upwards of thirty-four years, and who had not agreed to the dissolution of the society, applied, *Ex parte*, on the 9th of May, 1853, and obtained an interim injunction, restraining the defendants from proceeding. Some of the trustees, defendants to the bill, thereupon withdrew from the society, and others were appointed in

their place. The plaintiff then amended his bill, and now made the present application. The grounds upon which the plaintiff rested his case were, that the society was still an existing society; that the resolution for dissolving it was void, not having been agreed to by nine-tenths of the members, according to the rules of the society, or by five-sixths in value in accordance with the 10 Geo. 4, c. 56; and also that the intents and purposes of the society still remained to be carried into effect. It was further contended on the plaintiff's behalf, that supposing the dissolution to be complete, the funds ought to be divided among the members according to seniority, with reference to the time at which they became members of the society. That whatever might be the mode of distribution, as sanctioned by the court, of the general funds of the society, yet the plaintiff was entitled to the sum of 10*l.* for his "prospective" funeral, the more especially as he had never had occasion to draw upon the funds of the society on account of sickness. On the opening of the motion it appeared by the affidavits filed since the original motion, that an agreement had been come to and signed by upwards of seventy out of seventy-six, the then number of members, for the dissolution of the society and the distribution of the funds equally among the members. All had been members for upwards of seven years.

On the suggestion of the Vice-Chancellor, and by consent of all parties, the motion for an injunction was converted into a motion for a decree, in order that the case might be finally disposed of.

Karslake appeared for the plaintiff.

Rolt, Q. C., and *Eddis* opposed the motion.

Sir W. P. Wood, V. C.—His Honour, in delivering judgment, said that if this case had stood as it did at present when the bill was originally filed, he should have considered the present application as frivolous, and should have dealt with it accordingly. That at the time the notice of motion was given, the parties who were, independently of the Acts of parliament, bound by their own rules not to dissolve except according to a particular mode, were proceeding, in fact, to dissolve without having regard either to the rules of the society or to the statute. Looking at the facts of the case, the plaintiff had a clear right, up to the time at which the agreement was signed, to come to the court to complain that what had been done was unwarranted by the powers of the society. But it was contended that, notwithstanding that agreement (of

the existence of which the plaintiff had denied all knowledge, when the motion was brought on), he was entitled to have the funds of the society distributed in the way proposed. In this contention the plaintiff must fail; but the court could not say that there was not, at the time of raising it, a fair question to be raised, and the plaintiff must accordingly have his costs out of the funds. Then there remained the question as to the distribution, with respect to which it was necessary to look at the Act of parliament, which was clearly framed to prevent younger members from dissolving at the expense of the old ones. After providing for the number of votes to be obtained for the purpose of dissolution, the 26th clause of the Act proceeded to enact that it should not be lawful for the society by any of its rules to direct the distribution of the stock or funds among the several members of such society, otherwise than for carrying into effect the general intents and purposes of the society. The legislature clearly contemplated division upon dissolution. Looking to the fact that most of these societies were established for sick members or for particular contingencies, it was difficult to see how the funds could be distributed according to the general intents and purposes of the society, those being purposes which did not admit of immediate division. The court must give the nearest interpretion it could to a clause of that kind. The legislature intended that the fund might be divided, and if so, the court must look to the general intents and purposes of the rules, and if it found those general intents and purposes giving a very clear and decided preference to the senior members, or anything of that sort which the court could point out, his honour would have been slow to say that attention was not to be paid to that as one of the general purposes—but that case did not arise here. In the case of *Waterhouse* v. *Murgatroyd*, (9 L. J., N. S., Ch. 272), the late Vice-Chancellor of England was not acting under this statute at all, because the oldest Friendly Society Act was that of the 33 Geo. 3, passed in the year 1793, whereas the society in question before the Vice-Chancellor was established in 1784, and probably was not subject to any Act of parliament at all. The decision in that case went, to a great extent, to show that the court would endeavour to do its best, in societies of this description, to discharge them from involving themselves in litigation upon small and minute differences of opinion. In a case like the

present, where he found one or two members differing from seventy-two or seventy-three others, he should not be inclined, sitting in a court of equity, to strain a point in order to give this party any particular relief, even if it were necessary that any point should be strained. When he looked to the rules, he certainly did not see that it was necessary to strain any point at all. There was nothing to justify the court in saying that the plaintiff, although for thirty-four years a member, ought to have any advantage over the other members. In case of sickness they made another calculation—every person was to be paid according to an equality. The party was insured during the period of his subscription against that risk. As to burial—for it was the only remaining point—every member who had been so for five years, was to have 5*l.* for his burial, and when he had been ten years, or upwards, he was to have 10*l.* In this case every one had been a member for seven years. Every member, therefore, had passed the 5*l.* limit, and was progressing towards the 10*l.* limit. The plaintiff had a vested interest in the 10*l.* for his funeral hereafter. To say that, in that state of things, the general intents and purposes of the society could not be ascertained, because a certain number of persons must wait three years before they would be entitled to receive 10*l.*, would be straining the Act of parliament to an extraordinary extent. The proper order, therefore, would be this:—It appearing to the court, when the affidavits were read that since the notice of motion was given in this case, the assents of nine-tenths of the whole number of the members of the society pursuant to the rules, and of five-sixths in value, pursuant to the Act of 10 Geo. 4, c. 56, had been obtained to a dissolution and equal distribution of the funds of the society, the court doth declare that such dissolution is binding, &c.

All parties to have their costs out of the fund.

Ex parte Ashley. *Ex parte* Corder, 6 Ves. 441.—*A person in the habit of receiving the money of a Friendly Society having no treasurer appointed, upon notes carrying interest payable a month after demand, is not an officer of the society so as to entitle them to a preference under stat.* 33 *Geo.* 3, *c.* 54, *s.* 10.—Richard Smith and George Watson, attornies in partnership at

Whitchurch, in Shropshire, were, from the commencement of the establishment of a Friendly Society, in the habit of receiving from the stewards the money of the society, whenever it amounted to a sum which they considered worth placing out at interest, giving their promissory notes from time to time, carrying interest. Watson died, and Smith became bankrupt in 1795. At the time of his bankruptcy he was indebted to the stewards of the society to the amount of 145*l.*, upon his promissory notes, payable at one month's notice; which sum was composed of principal and interest due on several promissory notes of Watson and Smith. No person had been appointed treasurer of the society.

The first of these petitions was presented by the steward of the society, under the Act 33 Geo. 3, c. 54, s. 10, for the encouragement of Friendly Societies, to have the money due from the bankrupt paid by the assignees.

The petition came on before Lord *Rosslyn*.

Mr. *Benyon*, in support of the petition.—Though there is no appointment of the bankrupt as treasurer in the books of the society, he was in the habit of receiving the money of the society from time to time; in which case your lordship has held that a third person receiving the money from time to time is in the nature of a treasurer, and it is not necessary under the Act that he should be apppointed. That is the only ingredient wanting in this case.

Mr. *Pemberton*, for the assignees. It is not pretended that this bankrupt was either trustee or treasurer, or that he held any office. He was an attorney in the neighbourhood, in whose hands the stewards from time to time placed the money of the society, for which he gave them security. A prior clause (*a*) in this Act authorizes the treasurer or trustees to place out the money on private or government securities. The clause upon which this petition is presented is expressly confined to money received by virtue of his office; and the intention clearly was, that only debts due by officers of the society should be preferred; not debts from people intrusted by them with the money. Mr. *Cooke* (*amicus curiæ*) said, in the case alluded to, the party though not

(*a*) Sect. 6.

formally named treasurer or trustee, was in fact executing the office.

LORD CHANCELLOR.—I have a recollection of it, and take it so. I determined upon his being in fact treasurer. He had been so, I think, from the commencement of the society, before the Act. But this is no more than the case of any banker.

Mr. *Benyon*, in reply.—This is not one act, but a constant habit, when any money was received, of paying it to these persons; and when it amounted to this sum of 145*l.* a note was given.

LORD CHANCELLOR.—It was not a deposit of money and one note given; but it is admitted that it was regularly paid to them upon interest, they giving their notes. In order to make interest of the money, they paid it to an attorney of character, taking interest notes upon it. I think the practice right.

Upon this judgment the order was made accordingly, that the assignees should pay to the stewards of the society the sum of 145*l.* The other petition was afterwards presented, praying that the order might be discharged. That petition came before Lord Eldon.

Mr. *Romilly* and Mr. *Pemberton*, in support of the petition.—The words of the Act are very plain. In the matter of *Spendlow* a case upon which this order was made, the party was appointed treasurer. Another case, *Ex parte Askwith*, certainly is against this petition. The objection was made, that the party was not appointed treasurer, but the society had lent the money to him at interest. The Lord Chancellor said, there being no other treasurer, his having the money in his hands was equivalent; but the particular circumstances of that case do not appear. This bankrupt, upon the affidavits in support of the other petition, could not possibly be considered treasurer.

Mr. *Benyon*, for the society.—The late Lord Chancellor thought this case the same as *Ex parte Askwith*; and there have been several orders of the same kind, in which this has been considered equivalent to an appointment. Any person appointed to receive the money from time to time is treasurer for the time being.

LORD CHANCELLOR.—The question is a dry question of fact, whether the bankrupt was, or was not, the treasurer of the society. If he was not, it is clear the society had not against

individuals, with whom their officers choose to deal, the extensive remedies given by this Act against persons holding offices under them. I do not recollect enough of the cases cited to be able to state the particular circumstances; but I apprehend from the order in *Ex parte Askwith*, and what is now stated, these decisions went upon this, as a fact proved to the satisfaction of the court, that they were to be considered as treasurers; and they were in fact treasurers; and in the order *Ex parte Askwith*, there is an allegation, that the bankrupt entered into the said society as an ordinary member, served the office of president, and accepted that of treasurer, under what circumstances do not appear. No particular mode of election is pointed out by the Act; but he is in fact to be elected, and you must collect from the circumstances, whether he is constituted treasurer or other officer. Suppose the steward had distributed the money among all the bankers in the city, taking notes payable at a month's notice, with interest, no doubt the legislature did not mean that there should be 1,500 treasurers; and yet the same argument would prove them all so. This is, therefore, not a question of law, but whether under the circumstances of putting the money into the hands of the bankrupt, payable by a note at a month, with interest, he is to be considered treasurer, where there is no other. Upon my view of this Act, it does not occur to me that this bankrupt either received or retained this money by virtue of any office; or that the circumstance of this loan, payable at a month, with interest, will make him a treasurer, merely because no other treasurer was appointed; or that you shall imply, upon the mere receipt of the money, with such security, that he is a treasurer, either self-elected, or with the approbation of the society; for it would go this length, that every one receiving the money would be treasurer, if no other was elected. The treasurer is to be the creature of election. A preceding clause of the Act has clearly contemplated this case. Under that clause, if there was a treasurer, or, if not, a trustee, who laid out money upon private security of this sort, the persons would have the money in their hands; but the legislature confines the special remedy to the case of those who have it, not as debtors merely, but in that character, and also as having charged upon them duties and trust; for the clause giving this special and extensive remedy does not give it to those to whom the officers of the society have lent the money; but stops short. The

8th section is also material. If the relation in which this person stood to the society was formed by a security, in which they expressly stipulate, that he shall not pay over the money upon demand, can the intention of the transaction be to place him in an office, the persons exercising which, the legislature has said, shall pay it over on demand; upon whom therefore the society might, contrary to the stipulation of the note, call to have it paid over at a moment's notice. Observe the consequences in another respect. If benevolent persons would give these societies property, or, if persons should withhold money, which they had a right to demand, the society would, under this construction of the Act, be enabled to call upon this person as treasurer, and would file their bill, and defend their suits in his name. He must, therefore, be a person elected, and accepting the office; and it is too much to say, a person to whom their money is lent upon this sort of security, is *ipso facto* to become the treasurer by the fact of that loan, liable to the duties, inconveniences and obligations, imposed by the Act upon the officers.

Therefore, not meaning to say the cases referred to are not rightly decided, if the Lord Chancellor collected that the parties had accepted the office, however elected into it, it does not appear to me, that it ever was the intention to constitute in this person the character of treasurer; and it is impossible to argue it so high from the mere fact of his becoming a debtor to the society, that he became an officer of the society; and then it is clear, they have not this remedy against him. Revise the order, and let them prove the debt under the commission.

Ex parte Ross. 6 Ves. 802.—*Money paid by order of a Friendly Society from time to time upon notes carrying interest, there being no treasurer appointed, is not money in the hands of the party by virtue of any office within the Act of parliament,* 33 *Geo.* 3, *c.* 64, *s.* 10, *entitling the society to a preference in case of bankruptcy.*—The petition presented by the presidents and stewards of a Friendly Society under the Act of parliament (33 Geo. 3, c. 54, s. 10), prayed that the assignees under a commission of bankruptcy may pay the sum of 334*l.* 4*s.* which the

bankrupt, Dawson, had in his hands, as treasurer at the time of his bankruptcy, either out of the joint or separate estate.

Upon the affidavits it appeared, that no treasurer had been appointed by this society. The president and steward were chosen annually. The bankrupt had served the offices of president and steward in different years: in the latter capacity he had received the money of the society, but not in the former. The money, which was the subject of this petition, was from time to time paid to him by the stewards and clerks, by the order of the society, upon promissory notes, bearing interest, given by him in the name of the partnership, to the president and stewards; and, upon a change in the partnership, by taking in his sons, the security was changed.

The question was, whether, under these circumstances, this case was within the Act of parliament.

Mr. *Cox*, in support of the petition.

Mr. *Heald*, for the assignees.

Lord Chancellor.—In one case (*a*), Lord Rosslyn held, that any man who got the money of the society into his hands was within the Act. Upon a subsequent petition (*b*) I could not agree to that. I had a most clear opinion that it was impossible to maintain the proposition, that a man who, by consent of the society, receives a sum of money, gives a promissory note for it as a debtor, is within the Act of parliament an officer receiving it by virtue of his office. The case of another person receiving their money is the subject of another clause. If the bankrupt received as steward, president, or other officer of the society, for what he received by virtue of his office, you may make him accountable. But if the president received 300*l.*, and the society afterwards authorized him to lend that out to a bank, in which he was a partner, they would not have it by virtue of his office. I have no conception upon the meaning of this Act of parliament, that if they authorize him to lend it out upon security, the persons to whom it is lent can be said to have it by virtue of his office.

(*a*) *Ex parte* Ashley.

(*b*) *Ex parte* Corder; *Ex parte* The Amicable Society of Lancaster.

By the consent of the society, it is taken out of that possession by virtue of his office.

I must observe, that, if these Friendly Societies expect the benefit of that very liberal, and perhaps more liberal than just, provision of the legislature in their favour, that all creditors, however meritorious, shall be sacrificed to their demand, it is their business to take the protection given them in the mode in which it is directed, by appointing a treasurer, and making him give security according to the Act. The affidavits being contradictory, I will order the commissioners to inquire whether any, and what sums of money were in his hands at the date of the commission, by virtue of his office belonging to the society. But let it be understood, my decided opinion is, that if the money was lent by the consent of the society, upon a promissory note carrying interest, it is not money in his hands by virtue of his office.

You may bring an action if you please under this Act (*a*).

Ex parte Stamford Friendly Society. 15 Vesey's Reports, 280.—*The preference given to Friendly Societies, by the stat.* 33 *Geo.* 3, *c.* 54, *s.* 10, *over other creditors, is confined to debts in respect of money in the hands of their officers by virtue of their offices, and independent of contract; and therefore does not extend to money held by the treasurer upon his promissory note, payable with interest upon demand.*—This petition, presented by two of the members of the Friendly Society on behalf of the society under the Act of parliament, 33 Geo. 3, c. 54, s. 10, prayed that the assignees of Hanson, who had taken the benefit of the Act of insolvency, might be ordered to pay the sum of 60*l.* with interest, to the petitioners, in full discharge of his debt to the society, and in preference to his other creditors, under the following circumstances: The petition stated that Hanson, who kept a public-house, at which the society assembled upon the 8th

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(*a*) Sect. 6.

of October, 1805, the day of their annual meeting, as the father and treasurer of the society, had in his hands 30*l.* belonging to them; and the society having some money in the box, 20*l.* was placed in the hands of Hanson, who gave as security his promissory note, expressed to be for the sum of £50., borrowed and received of the society, which he promised to pay upon demand, with 4*l.* per cent. interest. The other sum of 10*l.* was stated to have been placed in his hands under the head of subsistence money. He paid interest upon the sum secured by the note for two years.

The LORD CHANCELLOR.—It is not for my consideration whether this Act of parliament, which certainly has a very harsh operation upon other creditors, excluding every fair, honest demand from sharing equally with these societies, was a reasonable provision of the legislature; but at least those who claim the preference must show their right to it in the mode prescribed by the Act. The preference is given in respect of money received by officers of these societies by virtue of their offices; but it never was the intention of the legislature, that persons to whom they chose to lend their money should pay them in preference of other creditors. The preference is given only in respect of money which got into the hands of officers, and independent of contract. This petition is entirely silent upon the fact, how far, and for what purpose, the rules of this society permitted the treasurer to receive and keep money, except the single allegation, that, as the father and treasurer of the society, he had in his hands 30*l.*, which is an averment that he had that sum in his hands as treasurer. The whole of this sum of 50*l.* was money in his hands by contract, not upon bond, or any obligation by virtue of his office. As to the 10*l.*, it is probable that sum, which is stated to have been placed in his hands as subsistence money, did not get to him as a treasurer. Keeping the public-house where they met, he might have had the money in his hands for that purpose. My opinion is, that the legislature did not intend that these societies should have the very large remedies given to them by this Act of parliament, unless the money was dealt with precisely as the Act directs; and if, instead of resting upon the security which the legislature gives them, they lend money to one of their officers, upon a special contract between him and them, that is a loan to him, and is not to be considered as money

in his hands by virtue of his office, within this Act of parliament. These Societies must understand that if they will lend money upon special contract, they have not the remedies which they suppose they have. The order was accordingly made for the payment of the sum of ten pounds, but was refused as to the remainder of the petition.

Ex parte Buckland, in the matter of Thick, 1818, 1 Buck, 514.—The 33 *Geo.* 3, *c.* 54, *s.* 10, *only applies to cases where the officer of the Friendly Society has, by virtue of his office, been intrusted with the monies and effects of the society.*—This was a petition by the members of a benefit society, under the comission of the clerk of the society, who had become bankrupt.

Mr. *Bell* and Mr. *Richards* opposed it, because it was sworn the clerk was not the person authorized by the society to receive the money, and that upon its being claimed from him as a debt, he had given security for the payment of it to the society.

Mr. *Roupell,* for the petition.

The VICE-CHANCELLOR.—This petition must be dismissed, on the ground that the bankrupt was not the proper person to receive the money. It is not sufficient to show that he was an officer of the society; it must appear that he was intrusted with the money in virtue of his office (*a*).

Petition dismissed without costs.

Cockerell *v.* Aucompte, 2 C. B. N. S. 440; 5 W. Rep. 633; 3 Jur. N. S. 845.—*Where a coal club entered into a contract with a merchant to supply them with coals, and authorized the secretary to order the coals for them, and by a rule of the club the coals were to be paid for out of the funds of the club in the*

(*a*) See 33 Geo. 3, c. 54, s. 6.

hands of the treasurer by means of an order given to the merchant on the next Thursday night after each delivery of coals signed by the secretary and the chairman of a meeting of the club :—Held, *that as the members of the club did not furnish the secretary with funds to pay for the coals, but authorized a contract on credit, the contract so made must have been on their credit and not on that of the secretary, and they were consequently liable to pay for the coals.*

Declaration.—For goods sold and delivered. *Plea.*—Never indebted.

The cause was tried before WILLES, J., at the sittings in London in Hilary Term last. The plaintiff was a coal merchant, and the defendant a member of the coal club governed by certain rules which had been certified by Mr. Tidd Pratt to be in conformity to law and with the provisions of the stat. 10 Geo. 4, c. 56, as amended by 4 & 5 Will. 4, c. 40. Amongst these rules were the following :—

9. That when necessary the secretary shall write to such coal merchants as a majority of the members present may require, for tenders to supply the society with coals, to be delivered in quarterly portions at the members' houses, free of expense. The tenders to be opened on the following meeting night, and finally determined by a majority of the members present which one shall be accepted. The secretary shall then draw up an agreement, which the merchant must sign; and if he does not perform it, the members to be at liberty to elect another merchant for the term of contract. On the next Thursday night after each delivery an order on the treasurers for payment, signed by the secretary and chairman, shall be given to the merchant.

14. That all money received, in whatever shape, shall be carried to stock, out of which the coal merchant, the secretary's salary, and every other legal demand shall be paid; after which the balance remaining at the end of every second quarter shall be equally divided (in proportion to the number of shares each member possesses) amongst those persons only who have belonged to this society both those quarters.

The plaintiff made a tender to supply coals to the society which was accepted by them, and a contract was entered into. The secretary afterwards gave an order for the delivery of the

coals, which were delivered to the several members of the club. When the time for payment arrived, it appeared that the secretary had not duly paid to the treasurers all the money received by him, and the sum in the treasurers' hands did not amount to the sum due to the plaintiff. The money in the treasurers' hands was paid, and this action was brought for the difference. It was contended at the trial, that the secretary had no authority to order coals on the credit of the members of the club.

The learned judge ruled that there was evidence of such authority, and the plaintiff had a verdict, leave being reserved to move to enter a nonsuit. A rule having been obtained, *Knowles*, Q. C., and *Skinner* showed cause. (*Everett* v. *Tindall*, 5 Esp. 169; *Southwaite* v. *Duckworth*, 12 East, 421; *Keasley* v. *Codd*, 2 C. & P. 408; *Flemyng* v. *Hector*, 2 M. & W. 172; *Todd* v. *Emly*, 7 M. & W. 427.)

Udall, in support of the rule. (*Flemyng* v. *Hector*; *Lord Mountcashel* v. *Robertson*, cited In re *The St. James's Club*, 16 Jur. 1075; *Everett* v. *Tindall*.)

Knowles, Q. C., referred to 15 & 16 Vict. c. 31, s. 11.

Cur. ad. vult.

CRESSWELL, J., now (May 23) delivered the judgment of the court.—This was an action for goods sold and delivered; plea, never indebted. The cause was tried before WILLES, J., at the sittings in London in Hilary Term, when it appeared in evidence that the plaintiff was a coal merchant, and the defendant a member of a coal club, governed by certain rules which had been certified by Mr. Tidd Pratt to be in conformity to law and within the provisions of the statute 10 Geo. 4, c. 56, as amended by 4 & 5 Will. 4, c. 40. The plaintiff made a tender to supply coals, which was accepted by them, and a contract was entered into in these words. [His lordship read it.] The secretary afterwards gave an order for the delivery of the coals, which were delivered to the several members of the club. When the time for payment arrived, it appeared that the secretary had not duly paid to the treasurers all the money received by him, and the sum in the treasurers' hands did not amount to the sum due to the plaintiff. The money in Whitbread's hands was paid to him; and for the difference this action was brought against the defendant, a member of the club. On the trial it was contended

on his behalf that the secretary had no authority to order coals on the credit of the members of the club. The learned judge ruled that there was evidence of such authority; and plaintiff thereupon had a verdict, the defendant having leave to move to enter a nonsuit. On showing cause it was contended that the rules of the club made the secretary the agent of all the members of the club in ordering coals; and that, as it appeared that the coals were to be paid for, not on delivery, but on a future day, by an order on the treasurer, signed by the secretary and the chairman of the next meeting held after the delivery of the coals, credit in the meantime must be given to the members of the club. On the other hand, it was contended that this club was as to debts similar to other clubs; and that according to the law laid down in *Flemyng* v. *Hector*, the members of the club were not responsible for goods supplied on the order of the secretary, each member having previously made payments into his hands sufficient to pay for the coals supplied to him. After a careful examination of the rules of the club we are of opinion that this rule must be discharged. The 3rd rule was in these terms:—That Messrs. Whitbread & Co. be appointed treasurers of this society, and will receive all monies taken by the secretary, to whom they shall give a receipt for the same, pay the coal merchant as soon after every delivery (and all other expenses of the society) as they shall receive an order signed by the secretary and chairman, and keep the balance in their possession till the end of every second quarter, when it must be given up to be divided according to article 14. The 14th rule was as follows. [His lordship read it.] According to the 3rd rule, then, the money placed in the hands of the treasurer was not to be paid out at the will of the secretary, but upon an order signed by him and the chairman of a meeting to be held after the debt was incurred as appeared by the 9th rule, which is the most important. [His lordship read it.] The rule shows that the secretary had no general authority vested in him to administer the funds of the club, or to conduct the business, or provide coals for the club. The members were to choose the party with whom a contract was to be made. That election having been made, the secretary was to draw up an agreement for the merchant to sign; but if the latter does not fulfil it to the satisfaction of the members of the club, they, and not the secretary, were to elect

another merchant; and after the contract was performed the secretary had no power to apply the funds of the club in satisfaction of the debt contracted, but could only act in conjunction with the chairman elected at a subsequent meeting of the club. He was therefore, throughout, a mere servant of the general body, and must be taken to have acted in that capacity in giving the order for the coals, the price of which is sought to be recovered in this action. The club never parted with their control over the money in the hands of the treasurers. They never authorized the secretary to expend it. They cannot deny that they authorized him to order the coals for them; and as they did not furnish him with the funds to pay for them, but authorized a contract on credit, the contract so made must have been on their credit, and not on that of the servant. We are therefore of opinion that this rule must be discharged, and in so doing we do not mean in the slightest degree to impugn the correctness of the decision of the Court of Exchequer in *Flemyng* v. *Hector*, and *Todd* v. *Emly*.

Rule discharged.

Beckett v. Willetts, 5 Weekly Reporter, 622.—*Where trustees of a Friendly Society, established under* 13 *&* 14 *Vict. c.* 115, *were appointed after* 18 *&* 19 *Vict. c.* 63, *had become law*, Held, *that it was not necessary to send to the registrar the resolution appointing the trustees, and that such trustees were liable to be sued for the debts of the society, incurred before their appointment.*

This was an action upon a printer's bill brought against the defendants as trustees of a Friendly Society, duly registered and certified, May 28, 1855, when 13 & 14 Vict. c. 115, was law. No trustees were appointed until March 4, 1856, when by a resolution of the society, the three defendants were appointed trustees. At that time the 18 & 19 Vict. c. 63, repealing 13 & 14 Vict. c. 115, had become law, and no notice of the resolution was given to the registrar of Friendly Societies. At the trial it was argued for the defendants, that by the society rules, and 13 & 14 Vict. c. 115, s. 13, the resolutions appointing the trustees ought to have been transmitted to the registrar to make the appointment valid,

and this not having been done, this action would not lie; and moreover as to 44*l.*, part of the claim, the defendants could not be liable, because it was for expenses incurred before their appointment; the plaintiff had a verdict, leave being reserved to move for a nonsuit. A rule *nisi* having been obtained.

Atherton, Q. C., and *Day*, showed cause.—It is not necessary under 18 & 19 Vict. c. 63, to transmit to the registrar a resolution appointing trustees in order to make that appointment valid. Here the defendants were appointed after that Act had passed, sect. 5 of which confers upon all societies the exemptions and privileges of societies established under that Act. The rules of the society, framed under the old Act, do not make the sending of the resolutions a condition precedent, and if they did, they could not bind a stranger; as to the sum of 44*l.*, no distinction can be made, for by ss. 18, 19 of 18 & 19 Vict., c. 63, the trustees for the time are the persons to be sued; but if there were no trustees, the defendants would be liable, as they were members of the society at the time of the work being done.

Hawkins and *Lewis*, *contrà*.—The defendants are liable as trustees of the society, and as such only can they be liable. They were appointed trustees under rule 4 of the society, which says that the appointment is to be transmitted to the registrar, according to 13 & 14 Vict. c. 115, sect. 13 of which says that no person shall be deemed a trustee until the resolution has been transmitted to the registrar. The statute requires that the rules shall contain a provision relative to the appointment of trustees, and therefore the 4th rule is not in accordance with the statute unless the transmission to the registrar is a condition precedent. [Lord *Campbell*, C. J.—But can the trustees say they are not duly appointed?] They can, because they are not sued upon any personal liability. [Lord *Campbell*, C. J.—But the society is sued, and it cannot say the appointment is not regular.] Sect. 17 of 18 & 19 Vict c. 63, enacts, that if no trustees are appointed, the treasurer is to act as trustee, as the existence of trustees is not necessary to the maintainance of the action. As to the 44*l.*, the debt was contracted before the appointment of the defendants.

Lord CAMPBELL, C. J.—At the trial I considered the only serious objection to be, that no notice of appointment of trustees had been transmitted to the registrar, but that difficulty is now got over; 13 & 14 Vict. was repealed before the appointment, and

18 & 19 Vict. confers the power of appointing trustees without the condition of sending the resolutions to the registrar. I think therefore, that these defendants were duly appointed trustees, and are liable to be sued for the whole debt.

WIGHTMAN, ERLE, and CROMPTON, JJ. concurred.

Rule discharged.

Smith *v.* Pryor and others, 5 Weekly Reporter, 294; 3 Jur. N. S., 387; 26 L. J., Q. B. 95.—*Friendly Societies which have not been certified under the* 18 *&* 19 *Vict. c.* 63, *nor have deposited with the registrar a copy of their rules, are not societies within the meaning of* 18 *&* 19 *Vict. c.* 63, *and therefore county courts have not jurisdiction to decide disputes between the members and the officers which arose before the rules were so deposited, or the society certified.*

In this case a rule had been obtained, calling on the plaintiff to show cause why a writ of prohibition should not issue to the judge of the county court of Birmingham, to prohibit him from further proceeding in a plaint which the plaintiff had entered in that court, as secretary of a society called the "Good Samaritan Lodge of United Brothers," No. 100, against the defendants, who were members. By the affidavits it appeared that the plaint was entered on the 18th of December, 1856, under the 18 & 19 Vict. c. 63. The particulars of demand recited that the society was a Friendly Society within the 18 & 19 Vict. c. 63, s. 44, and that at a meeting on the 3rd September, 1855, it was resolved that the defendants and another person be the depositors of a sum of 50*l.* in two banks, and that the rest of the society's money be placed in the treasurer's hands for certain purposes; that the defendants, in breach of such duty, deposited 60*l.* in one bank in their names only, and afterwards, on the 12th of May, 1856, drew the same out and divided the same amongst and retained and paid the same to themselves and other persons not entitled to the same, of whom the plaintiff was not one, whereby the society lost the 60*l.*, and for that the defendants about the 12th May, 1856, without authority, and in breach of the rules, took possession of, and detained and paid away to persons not entitled, the

said sum of 60*l.*, and the plaintiff claimed that the defendants be ordered to refund the same. The excess above 50*l.* was abandoned. It also appeared that this society had not been established before the Act 18 & 19 Vict. c. 63 became law; that its rules had not been certified by the registrar under that Act, nor had any copy of the rules been deposited with the registrar before the 12th May, 1856; that in the month of June, 1856, a copy of the rules had been deposited with the registrar by certain members of the society who dissented from what had been done on the 12th May. The case came on for hearing before the county court judge in January last, when the defendants objected that he had no jurisdiction under sect. 64 of 18 & 19 Vict. c. 63, because when the complaint arose the rules had not been deposited with the registrar.

Kennedy showed cause.—The question here is, whether according to sect. 44 of the Act, the county court had jurisdiction, because the rules were not deposited with the registrar when the cause of complaint arose. This depends upon sects. 41, 44, which are to be read together. Sect. 41 gives to societies established under this Act, or under the repealed Acts, certain modes of settling disputes, and sect. 44 intends to extend these provisions to uncertified societies. It is not necessary, according to the words of the Act, that the rule should be deposited when the dispute arose; the object of the Act evidently was to give the county court jurisdiction over all societies of this kind: sect. 44 provides that the provisions of sect. 24, as to punishment, shall extend to all uncertified societies. The cases of *Timms* v. *Williams*, 3 Q. B. 413; *Crisp* v. *Bunbury*, 8 Bing. 394, seem to show that by providing a remedy in the county courts, the jurisdiction in the superior courts is taken away. *Yates* v. *Roberts*, 3 Drew, 170, is an authority in favour of the plaintiff.

Bittleson, *contrà*.—The legislature only intended to confer the privileges given by the Act upon certified societies, but it was foreseen that disputes might arise between the deposit of the rules and the complete registration, and therefore sect. 44 was introduced to provide against that contingency. It could not have been intended that these provisions should apply to uncertified societies, because till they had regular rules deposited, there is no special law to which an appeal can be made. [He was then stopped by the court.]

Lord CAMPBELL, C. J.—The county court had no jurisdiction except under the statute, but this is not a society to which that statute applies, and therefore the rule for a prohibition must be made absolute.

COLERIDGE, WIGHTMAN, and CROMPTON, JJ. concurred.

Ruleabsolute.

Reg. *v.* Proud, 31 Law J. (M. C.) 71.—*The prisoner was a member of a duly certified Friendly Society. He was also paid secretary to the society. His duty, among other things, was to keep correct accounts of the receipts and expenditure of the society, to receive the monies weekly from members, and to pay what was due from the society, and weekly to place the balance in the society's box, which was left in the lodge room. He appropriated to his own use certain sums paid in by members, and omitted to enter them as received in the society's books.* Held, *that he might be convicted of embezzling the money.*

The following case was stated by the chairman of the court of quarter sessions:—The prisoner had been fifteen years a member of and secretary to a properly certified friendly society at Hexham, the rules of which, as far as they are material to the present case, were as follows:—*Duty of secretary.*—He shall attend all meetings of the lodge, take minutes of the proceedings thereof, and keep a correct account of the receipts and expenditure of the lodge, prepare all summonses in due time, attend the auditors to point out and explain anything they may require respecting the accounts when required by the officers or a majority of the lodge. He shall prepare all documents for the district and board of directors, and make the annual and other returns to the registrar, as required by the Friendly Societies Acts, 13 & 14 Vict. c. 115, and for his services he shall receive from the incidental expense funds of the lodge such sum as may be agreed upon on his acceptance of office. The prisoner was appointed secretary by the society, and as such received a salary of one pound per annum. No treasurer had ever been appointed, and the prisoner for the whole fifteen years had always at the weekly meetings of the society received all monies due from the members, giving receipts

for the same, and punctually made all payments due from the society, placing the balance in the society's box, with the books, at the lodge room. The prisoner always gave correct receipts to the members for their weekly payments, but made false entries in the contribution and cash book kept by him as secretary. In the course of last spring suspicions having arisen, the prisoner was called upon to deliver up his books and the balance in hand, and it was then discovered, by comparing the receipts received by the members from the prisoner with the books kept by him, that he had not entered in the books a large number of subscriptions received by him in small sums of 1*s.*, 2*s.*, and 3*s.* at a time, amounting in the whole to more than 100*l.* The prisoner was called upon for an explanation, and at once admitted he had received the money, and was willing to repay the amount by instalments, and said that the law could not touch him. The counsel for the defence contended that it no doubt was a breach of trust, but upon these facts the prisoner could not be convicted of embezzlement. In the course of the case the books of the society kept by the prisoner were tendered generally in evidence by the prosecution, and on behalf of the prisoner it was objected that the evidence must be confined to the three particular entries referring to the three charges in the indictment. The court, however, overruled the objections, and left the case to the jury, who found the prisoner guilty. The court thereupon passed sentence, but respited execution of the judgment on such conviction until the objection was considered and decided, and took a recognizance of bail from the prisoner to render himself in execution pursuant to the statute (11 & 12 Vict. c. 78). The opinion of the court of criminal appeal is asked whether, on the above facts, the conviction can be sustained. The case was not argued. *Per curiam.* (Pollock, C. B., Wightman, J., Williams, J., Martin, B., and Channell, B.) The conviction must be affirmed.

Ex parte, O'Donnell, Law Rep. Q. B. 274.—*An officer of a Friendly Society, being indebted to the society for moneys received on their behalf, resigned his office and made an assignment for the benefit of his creditors. The assignee received from the estate more than the balance due to the society, but refused to pay it over. No specific money belonging to the society was proved to have come to the hands of the assignee.*

Held, *that the assignee was not liable to be proceeded against before justices under section* 24 *of the* 18 *&* 19 *Vict. c.* 63.

John Jones was, up to the 20th December, 1864, treasurer to the Liverpool Minerva Lodge of Odd Fellows, a duly certified Friendly Society. On that day he resigned his office, being then indebted to the society in 73*l.* for moneys received on behalf of the society. In January, 1865, the 73*l.* being still unpaid, Jones executed an assignment for the benefit of creditors to two trustees, of whom one Isaac Storey is the survivor. Storey had received more than 73*l.* out of Jones's estate, but had not paid any of it to the society, although he received notice to do so, under section 23 of 18 & 19 Vict. c. 63. An information was then laid under section 24 against Storey, by Hugh O'Donnell, the present treasurer, on behalf of the society, charging Storey with having, as assignee of Jones, money in his possession belonging to the society, and withholding it. A summons was granted, and the information came on for hearing before the sitting justices of the borough of Liverpool, but they declined to adjudicate, on the ground that they had no jurisdiction, as Storey was not shown to have received any specific money belonging to the society.

Holker moved, on behalf of O'Donnell, on affidavits disclosing the above facts, for a rule calling on the justices to show cause why they should not hear and determine the information against Storey.

The justices declined jurisdiction, on the ground that the money was not identified. They have arrived at an erroneous decision. Section 23 gives to a Friendly Society priority over other creditors of an officer, and section 24, which is co-extensive with section 23, enables the justices to deal summarily with the accounts of the officer, enumerated in that section.

MELLOR, J.—The distinction between the two sections is, that section 23 applies to money which comes into the hands of the officer in a legitimate manner, and section 24 to cases in which the officer has obtained money by false pretences, or where he has specific money of the society in his hands, which he withholds or misapplies.

Section 24 contemplates both cases, that is, where the officer has obtained money by false pretences, and also where he has received money of the society, and does not pay it over.

SHEE, J.—Section 24 enacts, that in default of the payment of the money the person convicted before the magistrates shall

be imprisoned for any time not exceeding three months. If your construction is correct, the trustee of the officer, in default of payment, can be imprisoned with hard labour.

Section 24 is not limited to specific money received by the officer, because the order which the justices are to make is to deliver up the money, or if they have paid the debts of assignor with it, then the justices have power to order the trustees to repay which has been improperly applied.

MELLOR, J.—I think there ought to be no rule. The justices were right. The facts show that the case is not within section 24. This is clear from that part of the section containing the penalty; as my brother Shee pointed out, that section cannot apply to assignees who innocently, and it may be properly, receive money, but only to those cases where a person by his own act improperly obtains money, or, having it in his possession, refuses to give it up, then he is subject to all the penalties mentioned in that section. There is no evidence of the assignee having any money of the society.

SHEE, J.—I think section 24 only applies to cases where specific money is in the possession of the trustees. If persons withhold any moneys, securieties, books, papers, or other effects of a society, then they would be punishable in the manner pointed out by that section.

LUSH, J.—I am of the same opinion. This application is in effect to compel the assignee to pay a debt in priority of the other creditors; but the application to the justices under section 24 can only be made where there is specific money shown to belong to the society in the hands of the officer or his assignee.

Rule refused.

Exparte Wooldridge, 31 L. Jur. (Q. B.) 122. *Friendly Societies—jurisdiction of the County Court, stat.* 18 *&* 19 *Vict. c.* 63, *ss.* 40, 41.

Under the stat. 18 *&* 19 *Vict. c.* 63, *ss.* 40, 41, *the County Court has jurisdiction to reinstate a member of an enrolled Friendly Society improperly expelled, although the rules of the society prescribe a mode of determining disputes under them.*

The officers of a Friendly Society refused to continue sick pay to a member, on the ground that his daughter, who received the

money for him, had, on two occasions, knowingly received too much, and they expelled him from the society. By the 16*th of the registered rules of the society, disputes arising under the rules of any kind whatsoever, were to be referred to a private committee; and if not settled by them to mutual satisfaction, they were then to be referred to a district committee, whose decision was to be final. On an application for a mandamus to compel his restoration*:—Held, (*Cockburn*, C. J., *doubting*) *that the County Court had jurisdiction to reinstate him.* Quære, *whether rule* 16 *applied to this case. But held that if it did, the County Court would direct the society to hear the dispute, and if the rule did not apply, the County Court Judge ought to decide the matter in difference.*

This was an application for a rule for a *mandamus* to the Loyal Nelson Lodge of the Midland Counties Order of Odd Fellows Friendly Society at Woodside, to reinstate one George Wooldridge as a member of the society under the following circumstances. Wooldridge had been a member of the lodge for 20 years, and having in August, 1860, lost his sight, he became entitled, under the rules of the lodge, to 7*s.* a week for six months, and 3*s.* 6*d.* a week subsequently. By the inadvertence of Wooldridge and the treasurer, the 7*s.* a week was continued for several weeks beyond the six months, but the error being discovered Wooldridge repaid the excess, and continued to receive the reduced pay until August, 1861, when he was told by the officer of the society that he had orders not to make any more payments as he had received a week's pay in excess on the previous 6th of May, and that for that reason he had been expelled from the lodge. In answer to written applications for the sick pay, or that the applicant might be heard in support of his claim, one of the trustees stated that the case had "been heard before two committees, and then referred to the whole lodge, according to rule 16, and it was clearly proved that he had received monies unlawfully in receiving whole pay when he should only have received half-pay."

Rule 16 of the enrolled rules of the lodge was as follows:—"If a dispute arise under the rules in the lodge of any kind whatsover, which they cannot conveniently settle, they must refer the same to a private committee, and if the same be not settled by them to mutual satisfaction, it shall then be referred to the district committee, and their decision shall be final."

The other rules, however, did not refer to or make any mention of "a private committee," or a "district committee," the only committee alluded to in the rules being the "committee of management" already mentioned.

By another rule, "any member found imposing on the lodge by stating himself sick and incapable of following his employment when able, or actually doing so, was to be expelled."

J. E. Davis in support of the application. The necessity for applying to the court arises in this way. The statute 18 & 19 Vict. c. 63, s. 40, provides that "every dispute between any member or members of any society established under this Act, or any of the Acts hereby repealed, or any person claiming through or under a member or under the rule of such society, and the trustee, treasurer, or other officer, or the committee thereof shall be decided in manner directed by the rules of such society, and the decision so made shall be binding and conclusive on all parties without appeal, provided that when the rules of any society established under any of the Acts hereby repealed, shall have directed disputes to be referred to justices, such disputes shall from and after the 1st of August, 1855, be referred to and decided by the County Court as hereinafter mentioned."

This proviso, however, was repealed by the 21 & 22 Vict. c. 101, s. 5, and disputes are to be settled by justices if the rules so direct. By section 41 of the 18 & 19 Vict. c. 63. "All applications for the removal of any trustee, or for any other relief, order, or direction, or for the settlement of disputes that may arise or may have arisen in any society, the rules of which do not prescribe any other mode of settling such disputes"..... "shall be made to the County Court of the district within which the usual or principal place of business of the society shall be situate, and such court shall, upon the application of any person interested in the matter, entertain such application, and give such relief and make such orders and directions in relation to the matter of such application as hereinafter mentioned, or as may now be given or made by the Court of Chancery, in respect either of its ordinary or its special or statutory jurisdiction." In this case rule 16 does provide another mode of determining disputes, so the County Court has no jurisdiction, but on the other hand the prescribed mode of proceeding has not been followed,

and, further, there is no power to expel from the society for the acts imputed to the applicant. If the officers of the society allege fraud, they should proceed under section 24 of the 18 & 19 Vict. c. 63.

BLACKBURN, J.—Are you not in this dilemma? Rule 16 does or does not apply. If it does apply, that is the only mode of proceeding; if it does not apply, the County Court has jurisdiction.

Assuming that rule 16 does apply, the proceedings have not been duly taken under it, for the applicant has never been heard. He has no means of compelling the society to hear him, except by an application to this court. Further, having been expelled, he is no longer a member, and is not in a position to be heard, so that before he can take any steps he must be reinstated as a member.

CROMPTON, J.—Has this court ever interfered by *mandamus* in a case of this kind? The difficulty has never occurred before, as it only arises in consequence of the provisions of the recent statute under the 10 Geo. 4, c. 56, ss. 27, 28. It was required that the rules should state that disputes should be referred to justices or arbitrators, and under the 33 Geo. 3, c. 54, s. 15, members thinking themselves aggrieved might apply to justices, and this court has frequently interfered to compel justices to entertain such applications.

BLACKBURN, J.—In *Hull* v. *Macfarlane*, the Court of Common Pleas seems to have thought that under the equitable jurisdiction conferred upon it, the county court has power to give relief in all matters, provided the applicant is interested.

When that case was decided all disputes of every kind by persons interested in the society were determinable by the county court; for the rules directed disputes to be referred to justices, and the effect of the statute 18 & 19 Vict. c. 64, was to give that jurisdiction to the county court, the 21 & 22 Vict. c. 101 not having passed, and yet it was held that the county court had no jurisdiction, inasmuch as the case was not one of dispute, and the applicants not being members were not interested persons. No doubt it is very desirable that the county court should have jurisdiction in all these cases; and if this court had a clear opinion that he has jurisdiction, on the intimation of that opinion the judge of the county court would no doubt act.

COCKBURN, C. J.—I entertain great doubts whether the county court has jurisdiction, and whether this is a case within the Acts at all, for if the member is expelled he is no longer a member.

CROMPTON, J.—The utmost this court could do would be to compel the society to hear the applicant. I think we could not re-admit him as a member. Section 42 seems to point to such act by the judge of the county court, as that of ordering societies to re-admit members.

COCKBURN, C. J.—My learned brothers think that the county court has jurisdiction to reinstate the applicant if he is no longer a member and has been improperly removed, and consequently that this court has no jurisdiction. I have entertained some doubt upon the point, but I yield to the opinion of the rest of the court. It may be that the supposed expulsion is altogether a nullity and wholly inoperative, for, on the facts stated, there is no cause for expulsion, and no formal act of expulsion, only a statement that the applicant has been expelled. It also seems doubtful whether the matter originally charged against the applicant can be said to be a dispute within the meaning of the 16th rule. If, however, the county court judge reinstates Wooldridge as a member, assuming that he is really expelled, then, when he has all the facts before him, the judge will proceed either to inquire into the merits of the dispute and decide it, and give relief or make whatever order is proper; or if this really be a dispute within the 16th rule, he will direct the lodge to hear the applicant according to that rule.

Rule refused.

Hornby, *appellant*, Close, *respondent*, 2 Weekly Notes, 15.—*Friendly Society; enforcing rules; trades union, illegality of;* 18 *&* 19 *Vict. c.* 63, *ss.* 9, 24, 44.—The appellant, on behalf of "The United Society of Boiler Makers and Iron Ship Builders of Great Britain and Ireland," a copy of the rules of which society had been duly *deposited* with the Registrar of Friendly Societies, laid an information, under the 18 & 19 Vict. c. 63, against the respondent, a member of the society, charging that he had in his

possession 24*l.* 18*s.* of the money of the society, and unlawfully withheld the same.

On the hearing before justices of the West Riding, the charge was proved, but the respondent objected that the society was not within the 18 & 19 Vict. c. 63.

The society in question was stated on the title-page of the rules to be "instituted for the purpose of mutual relief of its members when out of employment, the relief of their sick, and burial of their dead, and other benevolent purposes, as inserted in their rules;" and many of the rules were for carrying out these purposes. But the following rules were relied on by the respondent, as showing that the society was not within section 44, and as showing that the society was established for a purpose illegal, being in restraint of trade, and against public policy.

Rule 20, section 1.—Should any free and full member be thrown out of employment through depression in trade, or circumstances satisfactory to the members of his branch, he shall receive a travelling certificate, &c. Section 2.—The travelling relief to be 1*s.* 8*d.* for each of the six working days. Section 4.—Any member leaving his employment of his own responsibility to seek for other employment shall not be entitled to travelling relief until he has again been in employment one month.

"Rule 28, *Piece-work*:—1. That in districts where members are compelled to work *piece-work*, and it be proved to the satisfaction of the executive council that the firm is reducing the prices below the usual and reasonable prices, they shall allow the men resisting the reduction 7*s.* per week for two weeks, after being out six days, after which they shall receive their travelling cards, according to Rule 20." "Section 2. That any member or members in a shop, either on piece-work or day-work, where a dispute arises connected with our trade or society, no member or members shall be allowed to call at such shop or shops after being made acquainted with such dispute, or, for doing so, to be fined 10*s.* And that any member of this society, either angle-iron smith, plater, rivetter, or holder-up, encouraging any holder-up or labourer to violate this rule by allowing him to practise with his tools, or otherwise instructing him in other branches of the trade, contrary to these rules, shall, on proof thereof, be fined for the first offence 5*s.*, for the second 10*s.*, and for the third expelled the society."

"Rule 29. *Disputes on day-work and benefits.*—Section 1. Should a dispute arise in any shop, the members of that shop shall make it known to their branch, which, if it only affects the interests of two or three members, such branch to have power to settle it, and grant to members wishing to travel 12*s.* cards, or 12*s.* per week donation. But should a general dispute arise in any shop which cannot be amicably settled by the branch, it shall be referred to the executive council, who shall give their instructions on the subject. All members losing their employment through such disputes, after being sanctioned by the executive, shall receive the sum of 12*s.* per week so long as they shall remain out of employment. This rule to be applied to all disputes, except the settlement of piece-work prices."

"Rule 42. Part of section 1: Any member using his influence to obtain employment for a non-member shall be fined for such offence 10*s.*"

The justices were of opinion that the objection was valid, and dismissed the complaint.

On appeal under 20 & 21 Vict. c. 43,

Mellish, Q. C. (*Macnamara* with him), for the appellant, contended that the rules relied on by the respondent did not take the society out of the category of a friendly society, and were not illegal.

The respondent did not appear.

THE COURT (Cockburn, C. J., Blackburn, Mellor, and Lush JJ.) were clearly of opinion that the society was not entitled to the benefit of the statute. In order to be within section 44, the society must be established for a purpose not illegal, and analogous to those mentioned in section 9. A main purpose, if not *the* main purpose, of the present society was not that of a friendly society, but of a trades' union; on that ground, therefore, it was not within section 44. And moreover this purpose of the society was an "illegal purpose," within the meaning of the section; for—whether the rules were illegal so as to bring those who acted on them within the operation of the criminal law or not—they were illegal in the sense of not being enforceable in a court of law, as in restraint of trade.

Liverpool County Court. (*Solicitors' Journal, Sept.* 2, 1865.) —Aug. 28.—Caraher *v.* Treacy and others—*The judge* (Mr. Serjeant WHEELER) *delivered the following judgment in the case of the St. Patrick's Burial Society.*

His HONOUR said: This is a rule *nisi* calling upon the defendant, John Treacy, to show cause why an attachment should not issue against him for contempt in not having paid the sum of £7,447 14*s.* 6*d.* pursuant to the order of this court, dated the 10th day of May. The rule was resisted by Mr. Norden, on behalf of the defendant, in a very lengthened argument, the essential points of which may be thus epitomised:—1. He says that the court has no jurisdiction to take an account of the moneys with which the defendant is chargeable, or, as a consequence, to make an order for their payment. 2. That, if there be jurisdiction in these respects, the account has not been duly taken, and that therefore no order of payment founded upon it can properly be made. 3. That if these objections fail the order is in form invalid, by reason of its directing payment to the receiver, who is a stranger to the suit. 4. That, if the order be valid both in fact and in form, this court has no power to enforce it by attachment. 5. That, if there be such power of attachment, the plaintiff is not entitled to ask for its exercise, because the rule *nisi* was granted on defective materials, inasmuch as the court had only evidence before it of the due service of the rule, and that the money had not been paid; whereas there ought in addition to have been proof, as in a common law court, that, after the date limited for payment of the money, its payment had been demanded and refused. I shall glance at the several objections in their order. As to the first and second, it may be remarked that the equitable jurisdiction conferred upon county courts in the case of friendly societies, takes its date from 1855, and has relation, as it appears to me, to that class of cases which may be said to fall within the description of internal disputes The authority of these courts does not, in my view, extend to questions distinct from membership, or to dealings and transactions external to the society as a friendly society. With regard to the provisions of the Act creating this jurisdiction, Chief Justice Cockburn says "I cannot conceive what language could give more extentive powers." And Mr. Justice Byles remarks that "It is impossible to conceive clearer terms giving the

county court all the remedial powers possessed by the Court of Chancery." Of course these expressions do not define the cases in which the county court has jurisdiction, but are explanatory of the extent of its powers where such jurisdiction exists. This cause appears to me to be within my cognizance, because, if not in all that is asked, certainly, in all that has been granted, the court has dealt exclusively with matters between the plaintiff as a member of the society, and having strict and close connection with its internal management. Although it may be said that the plaintiff is seeking a remedy for grievances, which, if they exist, are not peculiarly or exclusively his, and for which, therefore, he alone cannot sue, it must be remembered that, in transferring to this court powers which theretofore belonged entirely to the Court of Chancery, the legislature has not obstructed their exercise by the interposition of technical rules or formal difficulties, but has provided that, instead of its being necessary, as in chancery, in such a suit it would be, that all the members, except those inculpated, should be represented as plaintiffs, redress may be had in this court at the instance of "any party interested in the matter." If, then, I am right in the view that I have jurisdiction, and that its exercise may be asked at the instance of the plaintiff as a party interested, it follows that whatever account the Court of Chancery might have taken, or whatever orders it might have made in the matter, it is competent to this court now to make. No question can, I think, exist as to the power of the Court of Chancery, both to do what this court has done and to do it in the way in which this court has done it, namely, to take the defendant's books, as kept by himself or under his directions, and debiting him with the money therein stated to have been received, and crediting him with all the money which is there set down as having been expended or disposed of, call upon him to account for, in other words discharge himself from, the balance. A grave question might perhaps be raised whether, in thus admitting, without further evidence, than the entries themselves, every payment alleged to have been made, and every credit of which the benefit is claimed, this court has not taken too favourable a course for the defendant. But, under the circumstances, it appeared to be expedient, as a means of bringing the case within moderate limits, to adopt the defendant's books as the basis and limit of his acountability, and certainly he has no ground to

object to that course of proceeding. Under these circumstances I see no reason to doubt that it is my duty to adopt the account as thus taken, and to support the order which results from it, and in this view the defendant's first and second objections are disposed of. As to the third objection, it appears to me that the receiver is, for the purposes of this suit, an officer of the court, and, therefore, that the order may properly direct payment to be made to him. The fourth objection is that this court has no power to issue an attachment in the case. In other words, that it is powerless to enforce its orders, a conclusion which would in effect defeat the Act of parliament creating jurisdiction, and make the proceedings a solemn absurdity. There are in the Act two sections under which the powers of the county courts in these cases are granted—namely, the 41st and 42nd. It is true that the legislature has not accompanied the conferring of the new jurisdiction with express authority to attach for disobedience of orders made in pursuance of it, but it appears to me that the grant of jurisdiction carries with it, as a necessary and inseparable consequence, the powers incident to its exercise. There is high authority for this view. Mr. Justice Willes, in the case *Hoey* v. *M'Farlane*, 4 C. B. 734, says, "there are ample means for enforcing the orders of the county court. A power to enforce its orders," adds his lordship, quoting "Viner's Abridgement," "is incident to every court." And, in answer to the contention in the same case, that the remedies in the exercise of this equitable jurisdiction are limited to those prescribed by the 42nd section, and which are both inadequate and inapplicable in an infinite variety of cases, Mr. Justice Byles observes that the 42nd section in no way controls the 41st, and that the powers given by the 42nd are cumulative upon those of the 41st; thus vesting in the county courts a jurisdiction which the Court of Chancery does not possess. I come now to the fifth and last objection, in which I thought at first there was much force—namely, that after the time limited by the order for payment there must, as a necessary preliminary to the right to an attachment, be a demand and refusal of payment. It may be that if I were in this case exercising the power of a common law court, the demand would be necessary as contended for, but my functions are in fact those of the Court of Chancery, and it appears to me that in administering its remedies, I must, as far as possible, conform to its prac-

tice. In that court, as I am informed, the affidavit of the personal service of the order of payment, and of default in payment, as directed, is sufficient ground for an attachment, and as such evidence would suffice in chancery I must hold that it suffices here. But it must not be forgotten that a rule absolute in the first instance has not been sought by the plaintiff, but a rule *nisi* only, calling upon the defendant to show cause why he should not be attached. The defendant has made no answer by evidence or affidavit; he has limited his resistance to the rule to the arguments which the ingenuity of his learned advocate has suggested. This last objection must, in my judgment, share the fate of its predecessors. I may say before I conclude that I was reminded in the course of the discussion that the orders of this court in these cases are without appeal, and that the fact has been used as an argument against the right of the court to deal with the questions in issue in this suit. It may be that whilst parliament thought it right to place within reach of the classes constituting those friendly societies a cheap and easy remedy, and to make that remedy final and without appeal, it was not considered likely or perhaps ever possible, that questions involving very serious amounts would fall under the cognizance of the county courts. But whatever views may have been entertained upon this subject, the plain terms of the Act of parliament remain, and must determine what the jurisdiction is; nor am I at liberty to fritter away those terms or to decline to exercise the powers conferred upon me according to my conscientious view of what their true import is by the mere amount in question, which, after all, may be only a question of figures and not of principle, and may involve no difficulty either of law or of fact. I must, therefore, make the rule for an attachment absolute. But I shall direct the warrant to remain in the office for some reasonable time, to enable the defendant, if he should be so advised, to apply for a prohibition, and this can be done during vacation to a judge at chambers. Probably in the event of such application, the vacation judge may think it right, in a matter which is both new and important, to put it in train for discussion before the judges in Westminster Hall in the ensuing term.

Linton v. The Blakeney Joint Industrial Provident Society, 34 L. J. (Ex.) 211.—*Industrial and Provident Societies Act*, 1862, (25 & 26 *Vict. c.* 87), *Liability for debts incurred before the Act.*

A provident society formed before the passing of the Industrial and Provident Societies Act, 1862, (25 & 26 Vict. c. 87,) but incorporated by certificate of registration under that Act cannot be sued in its corporate capacity for a debt incurred before the Act in an action commenced after the Act. This was an action brought against the defendants in their corporate name to recover a debt incurred by the society before the passing of the Industrial and Provident Societies Act, 1862.

The society was formed under the Industrial and Provident Societies Act, 1852, (15 & 16 Vict. c. 31), while that Act was in force, but after the passing of the Industrial and Provident Societies Act, 1862, (25 & 26 Vict. c. 87), it obtained a certificate of registration under it. The debt sought to be recovered was incurred before the passing of the last-mentioned Act, but the action was commenced after. The case was tried before MARTIN, B., at Westminster, and a verdict was found for the plaintiff, leave being reserved to the defendants to move to enter a nonsuit if the court should be of opinion that they were not liable in their corporate capacity.

Macnamara in this term moved to enter a nonsuit accordingly.

Gates now showed cause.—The earlier Act (17 & 18 Vict. c. 25), provides for the appointment of certain officers who and who only could sue and be sued on behalf of the society. The 25 & 26 Vict. c. 87, repeals the former Acts, and incorporates these societies (sections 2 and 5). The effect of this is to change the name and alter the manner of suing and being sued, but the society remains the same. Section 6 enacts that the certificate of registration shall vest in the society all the property that may at the time be vested in any person in trust for the society, and all legal proceedings then pending by or against any such trustee or other officer on account of the society may be prosecuted by or against the society in its registered name without abatement, *a fortiori* new proceedings may be commenced. *Dean v. Millard*, 11 W. R. 913; 15 C. B. N. S. 19, is not an authority

to the contrary. It merely decided that the individual members may be sued under such circumstances as the present, not that the corporation may not. In fact there is an alternative remedy.

Macnamara, contrà, was not called on.

MARTIN, B.—We are all of opinion that this rule must be made absolute. The case is governed by that of *Dean* v. *Millard*. In that case the action was brought against the individual members, and the court held that it was well brought, on the ground that though for the sake of convenience, before the late statute, the names of public officers were to be used in actions against the society, yet the real cause of action was against the individual members, and they were ultimately liable. WILLIAMS, J., there says:—"That argument (referring to the argument for the defendants) would have been admissible if the legislature, instead of saying as they have done in section 6, that the certificate of registration shall vest in the society, all the property that may at the time be vested in any person in trust for the society, and all legal proceedings then pending by or against any such trustee or other officer on account of the society may be prosecuted by or against the society in its registered name without abatement, had gone on to say that all claims and rights of action existing at the time of the passing of the Act might be so prosecuted. But they have not said so—they have confined the indulgence to actions pending at the time of the obtaining of the certificate of registration. That must mean actions commenced before the passing of the 25 & 26 Vict. c. 87, because none could be commenced after against any but existing members." I was much struck by Mr. Gates' argument on the construction of the 6th section, but we cannot adopt his construction in opposition to the Court of Common Pleas.

BRAMWELL, B.—I was much struck with Mr. Gates' argument on the 6th section that it could not be meant to make a distinction between actions already begun and actions not yet begun. But the decision of the Common Pleas is express, and the legislature may have intended merely to avoid the inconvenience which would otherwise have arisen in the case of proceedings in progress at the time of the passing of the Act.

CHANNELL, B. concurred.

Rule absolute.

Touthill and another *v.* Douglas and others, 33 L. J., Q. B. 66.—*Industrial and Provident Society. Action.* 15 *&* 16 *Vict. c.* 31; 25 *&* 26 *Vict. c.* 87. *Liability of Trustees.*

The trustees of a provident society formed under the 15 & 16 Vict. c. 31, but not registered under the 25 & 26 Vict. c. 87, cannot be sued in an action commenced after the passing of the latter Act, as the previous Act is absolutely repealed by it without any saving clause.

Declaration dated the 30th of December, 1862, that the plaintiffs sue James Douglas, John Baines, and Robert Waterwath, as trustees of the York City and District Provident and Industrial Flour Mill Society, according to the statutes in such case made and provided, for money payable by the said society to the plaintiffs for goods bargained and sold and sold and delivered by the plaintiffs to the society, and for money found to be due by the society to the plaintiffs on account stated between the plaintiffs and the society (1).

Demurrer and joinder.

Kemplay, for the defendants.—This was not an action pending at the passing on the 7th of August, 1862, of the "Industrial and Provident Societies Act, 1862," the 25 & 26 Vict. c. 87, and though the society was registered under the original Act of 1852, 15 & 16 Vict. c. 31, that Act and the amending Acts 17 & 18 Vict. c. 25, and 19 & 20 Vict, c. 40 are repealed by the 1st section of the 25 & 26 Vict. c. 87 from the passing of that Act. So that although under section 2 of the 17 & 18 Vict. c. 25 the society's officers might and ought to have been sued. *Burton* v. *Tannahill* (2) on the passing of the Act of 1862, the society ceased to be a statutable society and became a mere partnership until registered under that Act, and so continues so; that the action ought to have been brought against all the members upon the repeal of the first two Acts, all the statutable machinery was gone.

Mellish, (*Patchett* with him,) for the defendants.—The 6th section of the 25 & 26 Vict. c. 87, shews that the property remains in the trustees until registration under that Act. By the 48th section of the 18 & 19 Vict. c. 63, that Act is to apply to all provident societies under the 15 & 16 Vict. c. 31, and by section 19 actions are to be brought by or against the trustees.

WIGHTMAN J.—By the 15 & 16 Vict. c. 31 being repealed there can now be no society under that Act.

COCKBURN C. J.—The Act of 1852 and the subsequent Acts have been repealed by the 25 & 26 Vict. c. 87, and that statute contemplates that these societies would acquire a new status by being incorporated, and it is for the purpose of registration only under the new Act that these societies can be said to be any longer in existence. All their rights and liabilities under the former Acts, in the absence of any saving clause, must have ceased with the repeal of the Acts under which they were constituted.

WIGHTMAN J.—There are no words in the new Act to keep alive the provisions of the old Acts in the event of a society not registered under the new Act. The legislature no doubt did not contemplate such a case.

Judgment for the defendants.

In re Sheffield Co-Operative and Industrial Society.—*Fountain's case*, 13 Weekly Rep. 667; *Joint-stock Company; Winding-up; Contributory; Industrial and Provident Societies' Act*, 1862, *s.* 20; *Companies' Act*, 1862, *s.* 74.

An industrial and provident society established as an unlimited company under the 13 & 14 Vict. c. 115 was subsequently registered as a limited company under the Industrial and Provident Societies' Act, 1862, (25 & 26 Vict. c. 87) for the purpose of being wound up. On an application to place on the list of contributories a person who held shares fully paid up before the subsequent registration.

Held, that on the true construction of the last-mentioned Act, and of the Companies' Act, 1862, such a shareholder could not be made liable as a contributory.

This was an application on behalf of the official liquidator of the Sheffield and Hallamshire Ancient Order of Foresters' Co-Operative and Industrial Society (Limited) to place the names of R. Fountain and G. E. Swift on the list of contributories in respect of their shares.

The society was formed in 1861 under the Industrial and Provident Societies Act, 1852, (13 & 14 Vict. c. 115,) and 15 Vict. c. 31, as an unlimited company. A petition was presented to the Master of the Rolls that the company might be wound up, but his Honour considered that the Industrial and Provident Societies Act, 1852, having been repealed by the Act of 1862, he had no jurisdiction to make the order. The matter was then mentioned to the Lord Chancellor, who confirmed the decision of the Master of the Rolls, and said that the society should be registered under the Industrial and Provident Societies Act, 1862. This was accordingly done, and a winding-up order made by the county court judge at Sheffield, and an official liquidator appointed. Upon a motion to settle the list of contributories, it was held that persons who like the shareholders in question were shareholders before the registration under the Act of 1862, could not be made liable as contributories under the winding-up order.

The present appeal was brought by the official liquidator against that decision.

The shareholders in question had fully paid up, and one of them, Mr. Fountain, had parted with all his shares except one, before the company became limited.

Druce, for the official liquidator, contended that though the company was registered as a limited company for the purpose of winding up, yet as it was established under the former Act as an unlimited company, the liability of those who were then members of the company had not ceased. He referred to *In re The Plumstead Water Company*, 2 De G. F. & J. 20. *Garnett* v. *Moseley Gold Mining Company*, 13 W. R. 412; 34 L. J. Q. B. 118; Industrial Societies Act, 1862, ss. 17, 20, 85, 86, 124; Companies Act, 1862, ss. 74, 194.

Elderton for the respondents was not called on.

The LORD CHANCELLOR said that he could not accede to the application for making an order for contribution as between the members of the company. He must take the case as he found it for the purpose of determining the liability in question. The company was for the purpose of winding up a limited company, and as such, the members in question were not liable to contribution, for they had paid up their shares. The company was registered under the Industrial Societies Acts, 1862, in which

was incorporated the Companies Act of 1862, and in the section in that Act defining "a contributory," that term was described as meaning "every person liable to contribute to the assets of a company under this Act."

If these words were applied to the Industrial Societies Act, we could only arrive at the same conclusion, namely, that a member of the company was liable as between himself and the other members of the company, according to the qualifications mentioned in the Companies Act, 1862. Then it was said that the definition of a contributory was qualified by the following section, which provided that "the registration under that part of the Act of any company should not affect or prejudice the liability of such company to have enforced against it, or its right to enforce any debt or obligation incurred on any contract entered into, by, to, with or on behalf of such company, previous to the registration. The case of *Garnett* v. *Moseley Gold Mining Company*, in the Exchequer Chamber, had no application to the case of contribution. On what was the notion of contribution founded, according to the rules of partnership. But that contract of partnership as it existed, and with respect to which only the court had power to enforce contribution, was one which excluded all liability to contribute, because the parties had paid to the full amount of their shares. It was not necessary to consider what were the rights of the creditors, but only whether where a company was a limited partnership and had become the subject of a winding-up order, the members of that company who, on the principle of limited partnership had nothing to contribute, must contribute in respect of the rights of creditors who might have claims against the company. At the time when the winding-up order was made, his Lordship thought he had no such power. There might be some failure of justice, but that would not warrant a construction that would have the effect of adding a new clause to the Act of 1862. It appeared to him that these two gentlemen were not liable. The official liquidator must pay the respondents' costs, and have his costs out of the estate.

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